

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 18 September 2007**

**CASE NO.: 2006-LDA-00131**

**OWCP NO.: 02-146577**

**IN THE MATTER OF**

**D.M.,  
Claimant**

**v.**

**SERVICE EMPLOYERS INTERNATIONAL,  
Employer**

**and**

**INSURANCE COMPANY OF THE STATE OF PENN,  
c/o AIG WORLDSOURCE,  
Carrier**

**APPEARANCES:**

**Gary B. Pitts, Esq.  
On behalf of Claimant**

**Jerry R. McKinney, Esq.  
James Azzarello, Esq.  
On behalf of Employer/Carrier**

**Before: Clement J. Kennington,  
Administrative Law Judge**

**DECISION AND ORDER DENYING BENEFITS**

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act

("The Act"), 33 U.S.C. § 901, *et. seq.*, and its extension, the Defense Base Act ("DBA"), 42 U.S.C. §1651, *et. seq.*, brought by D.M. ("Claimant") against Service Employers International ("Employer") and Insurance Company of the State of Pennsylvania c/o AIG WorldSource ("Carrier"). The issues raised by the parties could not be resolved administratively, and the matter was referred to the undersigned in the Office of Administrative Law Judges for a formal hearing. The hearing was held on April 25, 2007 in Houston, Texas.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant testified and introduced sixteen (16) exhibits, which were admitted, including: a photograph; Kellog Brown & Root employee assistance records; a letter from Claimant's subsequent employer; Claimant's LS-18; Employer/Carrier's LS-18; Employer/Carrier's Responses to Requests for Admissions; Employer/Carrier's Answers to Interrogatories; an article from *The New England Journal of Medicine*; post-traumatic stress disorder DSM-IV diagnosis and criteria; an article from *Deployment Quarterly*; an article from *Newsweek*; an article from the associated press; an article from the *Houston Chronicle*; an article written by Jim Goodwin, Psy.D.; an article from *Medscape Psychiatry & Mental Health*; and Claimant's 2006 income tax return.<sup>1</sup>

Employer/Carrier introduced thirty-six (36) exhibits, which were admitted<sup>2</sup>, including: Claimant's Answers/Responses to Employer/Carrier's Interrogatories, Request for Production, and Request for Admissions; Claimant's employment records; medical records; Cherilyn DeSouza, M.D.'s billing records and curriculum vitae; State of Kansas Worker's Compensation records; Leavenworth County Court records; transcription of Claimant's tape recorded statement; IRS records; Social Security Itemized Statement of Earnings; report from John Dorland Griffith, Ph.D.; report from Steven J. Rubenzer, Ph.D.; MMPI-2 report; vocational rehabilitation report; Claimant's wage records; Employer's First Report of Injury; LS-203, LS-207, and LS-18; depositions of Claimant, Peggy Ragland, Chester Herman Strehlow, M.D., Jeffrey Lawhead, M.D., Michael Weatherly, Cherilyn DeSouza, M.D., Jeffrey Hearn, and Claimant's wife.

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced my observation of the witness' demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

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<sup>1</sup> References to the transcripts and exhibits are as follows: trial transcript – Tr.\_\_\_\_; Claimant's exhibits - CX-\_\_\_\_, p.\_\_\_\_; Employer/Carrier's exhibits - EX-\_\_\_\_, p.\_\_\_\_; Administrative Law Judge exhibits - ALJX-\_\_\_\_, p.\_\_\_\_. Employer/Carrier's and Claimant's exhibits also contained many duplicates. Where duplicates exist, references will generally be made to only one exhibit.

<sup>2</sup> On May 23, 2007, Employer/Carrier filed an Opposed Motion to Supplement the Formal Hearing Record, requesting admission of a proposed exhibit 37, a copy of a blog entry from Claimant's website. According to Employer/Carrier, the proposed exhibit is germane to Claimant's claim for benefits. Employer/Carrier maintains that proposed exhibit 37 was not available for submission into the record during the formal hearing since the blog entry was not drafted until May 6, 2007. Although Employer/Carrier argue that proposed exhibit 37 is germane to the instant claim, the Motion to Supplement the Record is opposed and without more information from Employer/Carrier as to the relevancy of the exhibit, I am unable to admit the exhibit into the record.

## **I. STIPULATIONS**

The parties stipulated and I find:

1. Claimant suffered an “alleged” injury on August 12, 2005;
2. An employer/employee relationship existed at the time of Claimant’s “alleged” injury;
3. Employer/Carrier filed a Notice of Controversion on March 6, 2006 and May 23, 2006, and
4. An informal conference was held on June 28, 2006. (ALJX-1, p. 1).

## **II. ISSUES**

1. Whether Claimant was injured in a zone of special danger;
2. Causation;
3. The nature and extent of Claimant’s disability;
4. Determination as to when, or if, Claimant reached maximum medical improvement;
5. Whether Claimant is entitled to temporary total or temporary partial disability compensation;
6. Average weekly wage;
7. Section 7 medical benefits; and
8. Attorney’s fees, penalties, and interest .

## **III. STATEMENT OF THE CASE**

### **A. Chronology:**

On August 12, 2005, Claimant was driving a bobtail truck in a convoy that was subjected to improvised explosive devices (“IEDs”) and small arms fire on the way to Camp TQ. (Tr. 27). The second IED that was detonated went off underneath another driver’s truck. Claimant’s convoy commander directed him to drive up to the damaged truck to retrieve the driver.

Claimant attempted to retrieve the driver from the damaged truck. As soon as he gained access to the driver's truck, Claimant realized nothing more remained of the driver other than his forearm which Claimant found lying on the truck's center console. (Tr. 29). Approximately forty-five (45) minutes after the IEDs were detonated another military tank approached Claimant's truck. A soldier in the Bradley tank told Claimant to follow the other tank so that he could "catch-up" to the rest of the convoy. When the convoy arrived at Camp TQ, counselors were brought in to counsel everyone in the convoy and members of the convoy were told to take administrative leave until they felt able to resume working. Most of the members of the convoy, including Claimant took five (5) days of administrative leave. (Tr. 31).

According to Claimant, following the August 12, 2005 attack on the convoy, he experienced nightmares and could still see the explosions in his mind. (Tr. 32). Nevertheless, Claimant resumed working with his convoy approximately one (1) week after August 12, 2005. (Tr. 32-33). He continued working with the convoy for approximately three (3) to three and one-half (3½) weeks. During this time, he only confided in a few friends regarding his nightmares and visualizations. Following the three (3) to three and one-half (3½) weeks of his continuing work, Claimant returned to the United States for R&R. (Tr. 33, 39-40). He had planned to return to his employment in Iraq on October 5, 2005 and to work for an additional six (6) months. (Tr. 39, 73). However, a week and one-half to two weeks later Claimant discovered that one of his friends was killed in an incident in Iraq. (Tr. 40-41). Claimant was so grief-stricken by the death of his friend that he decided not to return to his employment in Iraq. (Tr. 40-41).

After deciding not to return to his employment overseas, Claimant obtained a truck driving job with a local trucking company. (Tr. 33-34). According to Claimant, he felt as though everything was fine when he began working for the local company. Eventually, however, he began to feel overwhelmed by depression and anger over the August 12, 2005 IED attack in Iraq. (Tr. 34). Claimant ultimately reached a point where he called his wife and told her that if it were not for her and the children, he would slit his throat. (Tr. 34). Consequently, Claimant's wife pursued an appointment for Claimant with an employee assistance program ("EAP") counselor through the EAP service provided by Employer/Carrier. (Tr. 34-35). On February 22, 2006, the EAP counselor, Dr. Minix, determined Claimant was suffering from post-traumatic stress disorder ("PTSD") as he indicated he had vivid memories of the death of his co-worker. She referred Claimant to Peggy Ragland for treatment of his PTSD. (CX-2, p. 3).

## **B. Medical Records**

### **KBR Health Records**

Claimant met with a counselor through Employer's EAP service on August 14, 2005 in order to discuss his reaction to seeing his friend and co-worker killed. The meeting lasted approximately forty-five (45) minutes. Claimant reported being very upset and emotional. The EAP counselor noted that despite Claimant's reaction to seeing his friend and co-worker killed, Claimant expressed a desire to return to work. He also noted Claimant's speech, orientation, and memory were fine and that Claimant was not homicidal or suicidal. Claimant and the EAP

counselor “processed” Claimant’s experience and feelings in order to validate Claimant’s reaction and experience. The EAP Counselor noted Claimant indicated he did not need further counseling though the option of further counseling was offered to him. (CX-2, p. 2).

On September 1, 2005, Claimant met again with an EAP counselor to discuss his progress and current symptoms. The meeting lasted approximately one (1) hour. The EAP counselor noted that Claimant was in an upbeat mood as he was leaving for R&R. Claimant reported that he was struggling with anxiety and flashbacks. Claimant and the EAP counselor discussed ways for Claimant to cope with his anxiety and flashbacks. The EAP counselor noted overall Claimant was doing well and expressed a resolve to “continue on.” (CX-2, p. 2). On February 16, 2006, Dr. Minix who Claimant’s wife contacted through Employer’s EAP program noted she received a telephone call from Claimant’s wife wherein Claimant’s wife indicated Claimant was having difficulty “getting his job back.” On February 22, 2006, Dr. Minix received a telephone call from Claimant wherein Claimant indicated he spoke with a representative of Employer in order to try to get his job back. He indicated he did not abandon his position and wanted to “clear his name.” Dr. Minix referred Claimant to another representative of Employer for PTSD as he indicated he had vivid memories of the death of his co-worker. She also referred Claimant to Peggy Ragland for treatment of his PTSD. (CX-2, p. 3).

### **Peggy Ragland, LCSW**

Claimant was referred to Ms. Ragland for treatment of PTSD by Drs. Minix and Lawhead. He presented to Ms. Ragland complaining of problems with depression, temper/anger, feeling people are against him, unresolved issues with family of origin, loneliness, occupational concerns, decision making, financial concerns, poor self image, stress management, and emotional concerns. (EX-4, p. 7). He indicated that the problems of which he complained had existed since he returned from Iraq and that he had “not really” had similar problems to those complained of in the past. He reported, however, suffering from attention deficit disorder (“ADD”) in his childhood. (EX-4, p. 8). He indicated he was employed as a delivery driver, but that he hated his job as it was very demanding, very physical, and required him to do the work of two (2) people by himself. (EX-4, p. 9). He also indicated he was taking Ambien on occasion and was not currently considering suicide. (EX-4, p. 11). He identified his goal of treatment as wanting to be the person he was before he left for Iraq. (EX-4, p. 12).

Ms. Ragland met with Claimant on March 1, 2006. Claimant reported that he suffered from depression, irritability, anger outbursts, recurrent thoughts and nightmares, and periodic flashbacks. According to Ms. Ragland, Claimant indicated he has suffered from depression, irritability, etc., since he returned from Iraq where he witnessed an explosion and death of a co-worker. Ms. Ragland determined Claimant suffered from post-combat PTSD. She diagnosed him as suffering from PTSD and major depression, single episode, moderate to severe as a result of the trauma he experienced in Iraq. She recommended Claimant undergo cognitive and supportive therapy. (EX-4, p. 15). On March 8, 2006, Ms. Ragland met with Claimant for a follow-up appointment. She noted Claimant’s affect was tearful. She recommended Claimant continue to verbalize the emotional import of the events he experienced in Iraq. She instructed

Claimant to use a relaxation technique to help decrease his tension and anxiety. Ms. Ragland met with Claimant again on March 29, 2006 for a follow-up appointment. Claimant's wife participated in Claimant's March 29, 2006 appointment as well. She and Claimant expressed concerns regarding Claimant's changes in mood, attitude, and behavior. Ms. Ragland recommended Claimant continue to work through the effects of the trauma. She also recommended he continue his relaxation techniques to decrease his agitation. (EX-4, p. 16).

On April 13, 2006, Claimant met with Ms. Ragland for another follow-up appointment. Claimant reported an increase in his irritability and agitation. He also complained that he was short tempered and yelling at his kids, which was uncharacteristic of him. In addition, he reported an increase in conflicts at home and difficulty concentrating at work, resulting in a "near miss" accident on the road. Ms. Ragland recommended Claimant continue to work through the effects of the trauma and also that he continue his relaxation techniques. She also referred him to his physician for a medication evaluation and possible change in his medication. (EX-4, p. 16). Claimant met with Ms. Ragland for another follow-up appointment on April 19, 2006. Claimant presented with complaints of continuing difficulties with mood, attitude, and concentration. Ms. Ragland noted Claimant's medication had been changed from Lexapro to Cymbalta. According to Ms. Ragland, Claimant reported his employer stopped him from driving mid-route because of his use of Cymbalta. As a result, Claimant was stressed about finances. Ms. Ragland recommended Claimant continue to work through his trauma to decrease his stress and anxiety. On May 3, 2006, Claimant met again with Ms. Ragland for a follow-up appointment. According to Claimant, he was on "long term" vacation from work. He reported continuing problems with irritability and anger outbursts. Ms. Ragland noted Claimant was continuing to take Cymbalta for his anxiety and depression. She also noted that she and Claimant re-visited the traumatic events he experienced in Iraq, which caused Claimant to become tearful and angry and also caused him to visibly shake. She recommended he continue to work through his trauma. (EX-4, p. 17).

Claimant met with Ms. Ragland for another follow-up appointment on May 9, 2006. He reported difficulty sleeping due to nightmares and flashbacks. He also reported continued irritability and frustration in addition to intolerance to daily "family stress." Ms. Ragland recommended Claimant continue to process his reactions to the trauma and to continue relaxation techniques. (EX-4, p. 17). On May 18, 2006, Claimant and his wife met with Ms. Ragland for a follow-up appointment. Claimant and his wife reported that his mood and reactions to family situations were problematic. Claimant reported he was having difficulties sleeping and problems with being short-tempered. Claimant met with Ms. Ragland for another follow-up appointment on May 23, 2006. Claimant reported that his depression had worsened. He also reported that his finances had gotten worse. He met with Ms. Ragland again on June 1, 2006. He reported that he was continuing to experience depression and agitation. He also reported an increase in conflicts with his spouse. Ms. Ragland recommended Claimant continue relaxation techniques to increase calming. (EX-4, p. 18).

## **Cherilyn DeSouza, M.D.**

Claimant met with Dr. DeSouza on August 8, 2006 on referral from Ms. Ragland. Claimant reported that he had been diagnosed with PTSD. He presented with complaints of nightmares, flashbacks, and mood swings. Dr. DeSouza noted that Claimant reported he had not worked since April 26, 2006. She also noted that Claimant had not been taking his medications as prescribed. She indicated his medication had been switched to Cymbalta in mid-April when he was “medically” told to stop driving. (EX-8, p. 5). According to Dr. DeSouza, Claimant reported that he was experiencing suicidal thoughts and crying spells. Dr. DeSouza concluded Claimant was suffering from PTSD. She increased his prescription for Cymbalta to 60mg and provided him with a prescription for Seroquel as well. (EX-8, p. 6). Claimant met with Dr. DeSouza on August 15, 2006 for a follow-up appointment. He reported that he was doing better, sleeping well with help of the Seroquel, and had not had a nightmare since Saturday. He also reported that he was working for his brother-in-law and felt safe working for him. Dr. DeSouza noted Claimant’s mood had improved and recommended he continue taking his medications as prescribed. She also recommended he continue with his supportive therapy. (EX-8, p. 4).

On August 29, 2006, Dr. DeSouza met again with Claimant for another follow-up appointment. Dr. DeSouza noted that Claimant was doing better and sleeping well with help of the Seroquel. According to Dr. DeSouza, Seroquel also helped to calm Claimant, which was why Claimant referred to Seroquel as his “chill pill.” She noted that Claimant was laughing and smiling more. She also noted, however, that he was not his former self, but was definitely improving. She recommended Claimant continue taking his Cymbalta and Seroquel as well as continue with his supportive therapy. (EX-8, p. 3). Claimant met with Dr. DeSouza on September 14, 2006 for another follow-up appointment. He reported that he had experienced a few bad days. He complained of suffering from flashbacks, but indicated they were not as bad as the flashbacks he had suffered earlier. According to Dr. DeSouza, Claimant’s brother-in-law was considering laying Claimant off of work, which really depressed Claimant. Overall, Dr. DeSouza noted Claimant was doing much better but that he still had “a ways to go.” She recommended he continue his medications and supportive therapy. (EX-8, p. 2). Claimant met again with Dr. DeSouza for another follow-up appointment on October 7, 2006. He reported that he had been laid off from work. He also reported that he had looked for work all week. Dr. DeSouza suggested Claimant pursue vocational rehabilitation if he was eligible to do so. She noted that overall Claimant was improving in his ability to cope with the trauma. She also noted that Claimant was taking his medications as prescribed. She recommended he continue taking his medications as prescribed. (EX-8, p. 1).

## **Associates in Family Health Care**

On January 3, 2006, Claimant met with Jeff Lawhead, M.D.<sup>3</sup> Claimant present with complaints of a chronic cough, chest pain, and congestion. Dr. Lawhead diagnosed Claimant as suffering from pneumonitis, chest pain, and costochondritis. He prescribed Z-Max for Claimant

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<sup>3</sup> Besides meeting with Dr. Lawhead, Claimant also met with Dr. Lawhead’s partner, Chester Herman Strehlow, Jr., M.D., for an evaluation of an unrelated injury. (EX-31, pp. 2-4; EX-3, pp. 4, 43).

and directed him to use non-steroidal treatment for his chest pain. He also directed Claimant to return in two (2) weeks for a follow-up appointment. (EX-3, p. 8). Claimant met with Dr. Lawhead again on April 14, 2006. He presented with complaints of depression, anxiety, and PTSD. Dr. Lawhead noted that Claimant had been on several medications that were not helping. He also noted Claimant's mental status revealed post-traumatic stress syndrome from an incident in Iraq where he was following a truck that was hit by an explosive, leaving a "close comrade" dismembered. He further noted that Claimant reported having difficulties with irritability, depression, and anxiety. He additionally noted Claimant had a history of suffering from ADD. Dr. Lawhead diagnosed Claimant as suffering from depression, PTSD, and ADD. He provided Claimant with a prescription for Cymbalta 30mg and Concerta 36mg. He recommended an increase in Claimant's Cymbalta prescription to 60mg after one (1) week. (EX-3, p. 7). On May 19, 2006, Dr. Lawhead indicated in a letter addressed to the United States Department of Labor and Carrier that Claimant was unable to continue work as a truck driver as he was taking medication which was not DOT approved. (EX-3, p. 21).

### **C. Vocational Rehabilitation Report**

William C. Hosman evaluated Claimant for purposes of vocational rehabilitation. According to Mr. Hosman, Claimant told him that his only work restriction was that he could not operate a motor vehicle because of the medication that he was taking. He also informed Mr. Hosman that he had been offered a part-time job at a local automotive repair shop where he would be earning a little over \$10.00 an hour. Mr. Hosman noted that \$10.00 an hour was not enough to support a family. Mr. Hosman requested Claimant provide him with Employer's contact information so he could see if Claimant's return to employment "in some capacity" was possible. According to Mr. Hosman, Claimant told him a return to employment with Employer would not be possible. Mr. Hosman contacted a representative of Employer who stated that if Claimant could be "weaned" of his medication Claimant might be able to return to his former employment as a driver. (EX-23, p. 2).

Mr. Hosman contacted Ms. Ragland to discuss Claimant's work restriction. She indicated Claimant would be on his medication until at least the following year at which time he would be re-evaluated. She also indicated that she could not say with any degree of certainty whether Claimant's work restriction was temporary or permanent. Mr. Hosman contacted another representative of Employer, Matt Denny, and informed Mr. Denny of his conversation with Ms. Ragland. According to Mr. Hosman, Mr. Denny informed him that Claimant's return to employment with Employer would not be possible as any person who is taking medication for a psychological condition is not permitted to drive a commercial vehicle. Mr. Hosman concluded Claimant should be scheduled for vocational testing to determine his interests, aptitudes, and abilities to work.<sup>4</sup> (EX-23, p. 3).

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<sup>4</sup> Although Mr. Hosman concluded Claimant should undergo vocational testing, there is no information in the record to indicate he ever underwent such testing.



## **D. Wage and Earnings Records**

According to Claimant's tax records, he earned \$41,366.61 in wages in 2004, which included \$31,373.29 in wages he earned working for Employer/Carrier. (EX-18, pp. 22-23). In 2005, he earned \$70,476.00 in wages, which included \$60,950.00 that he earned while working for Employer/Carrier. (EX-18, pp. 9-10). In tax year 2006, Claimant earned \$32,027.75. (CX-16, pp. 10-12). According to Claimant's wage records from Employer/Carrier, Claimant earned \$92,323.75 from October, 2004 to September 2005. (EX-24, p. 1). His wage records also show that from November 2004 to September 2005 he earned \$88,158.24 in wages.<sup>5</sup> (EX-24, p. 2).

## **E. Testimony**

### **Claimant's Testimony**

Claimant testified at the formal hearing in this matter on May 25, 2007. Claimant is a thirty-eight (38) year old male with a high school education. (Tr. 13-14). Claimant possesses a Class "A" driver's license and has several years' experience driving trucks in addition to some experience in retail management. (Tr. 14-15). Claimant arrived in Kuwait to begin work as a truck driver on September 8, 2004. (Tr. 17, 73). He originally intended to drive in the tanker division; but, instead volunteered to drive a flatbed as there was a shortage of flatbed drivers. Claimant was "based" in Kuwait from September 2004 through April 2005. (Tr. 17). As part of his employment, Claimant drove in convoys from Kuwait to various military bases, including Camp Cedar II, Scania, Anaconda, BIAP, and Camp TQ to transport water, food, lumber, military vehicles, and military equipment to and from the bases. (Tr. 18-19).

While Claimant was overseas, he was not allowed to carry a firearm as Employer/Carrier informed him to carry a firearm would be against the terms of the Geneva Convention. (Tr. 19, 22). Although Claimant did not carry a firearm, he did carry a dagger. (Tr. 19). According to Claimant, Iraqi insurgents do not distinguish between military and civilian personnel when they attack. As such, both military and civilian personnel are exposed to small arms fire and IEDs. (Tr. 21). Employer/Carrier did not discuss with Claimant what might happen if he was captured by insurgents. (Tr. 22). Rather, Employer/Carrier told Claimant he could be shot or killed. (Tr. 23).

Claimant worked overseas for Employer/Carrier from September 8, 2004 to September 5, 2005. (Tr. 23, 73). During his employment with Employer/Carrier, Claimant drove in a convoy for approximately one-hundred (100) missions, driving outside the "perimeter line" approximately twice a week. According to Claimant, he never saw any Iraqi insurgents, but some of the convoys he drove in were subject to small arms fire and an occasional IED. (Tr. 23). Claimant realized he was in a war zone when one evening shortly after he arrived a convoy that was traveling ahead of his had been attacked, causing his convoy to have to sit for a couple of hours in radio silence and complete darkness. During his employment with Employer/Carrier,

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<sup>5</sup> The record also contains an undated letter from Claimant's brother-in-law, which indicated Claimant earned \$10.00 per hour and worked thirty (30) to forty (40) hours per week. (CX-3, p. 1).

Claimant was required to wear a Kevlar helmet and bulletproof vest. He worked approximately twelve (12) to fourteen (14) hours a day, seven (7) days a week. (Tr. 24).

On August 11, 2005, Claimant drove in a convoy from Camp TQ to Camp Corrigador in order to deliver pre-fabricated buildings. On the way to Camp Corrigador the convoy was subject to five (5) or six (6) IEDs. Claimant's convoy commander's truck was struck by two (2) IEDs and another driver's truck was struck by one (1) IED. (Tr. 25). According to Claimant, another driver in the convoy saw a man standing on the side of the road pushing buttons to detonate the IEDs. (Tr. 25-26). The man handed the mechanism he had used to detonate the IEDs to a child and ran into the village as soon as military vehicles approached. Despite coming under attack, no one was killed or injured by the IEDs. However, several trucks sustained damage. After the attack, the convoy continued on to Camp Corrigador, arriving sometime in the late evening. Drivers in the convoy were not able to unload all of their trucks since the Camp could not be lighted after dark for security reasons. Therefore, the convoy drivers stayed the night in Camp Corrigador and unloaded the remainder of their trucks early the next morning. (Tr. 26).

After unloading the remainder of their trucks, Claimant and another driver repaired one of trucks that had been damaged in the IED attack the previous day. (Tr. 26). At approximately 1:00 p.m. the convoy, consisting of twelve (12) trucks and one (1) bobtail, a tractor without a trailer, began staging to return to Camp TQ. Claimant drove the bobtail and was required to assist or repair any damaged or distressed trucks in the convoy. (Tr. 26-27). If any damaged or distressed truck could not be repaired or was unsalvageable, Claimant was required to hook the trailer of that truck to his tractor to continue on with the convoy. In addition, should a truck be disabled due to small arms fire or something of that nature, Claimant was required to retrieve the driver of the disabled truck in order to get him out of the "kill zone." As driver of the bobtail truck, Claimant was positioned in the rear of the convoy. (Tr. 27).

On August 12, 2005, the convoy was subjected to more IEDs on the way back to Camp TQ. (Tr. 27). The second IED that was detonated went off underneath another driver's truck. Claimant's convoy commander directed him to drive up to the damaged truck to retrieve the driver. When Claimant reached the damaged truck, he radioed back to his convoy commander to bring up the rear element, or Bradley tanks, as the convoy was receiving small arms fire. (Tr. 28). Claimant then attempted to retrieve the driver from the damaged truck. As soon as he gained access to the driver's truck, Claimant realized nothing more remained of the driver other than his forearm which he found lying on the truck's center console. According to Claimant, he was in such shock over not being able to retrieve the driver from the truck that he didn't even realize that the convoy was under small arms fire. Claimant wasn't able to realize that the convoy was under small arms fire until soldiers from a Bradley tank told him to get back in his truck and position it behind the tank so as to shield Claimant and the truck from the gunfire. During the gunfire exchange, a soldier entered Claimant's truck to tell him what he already knew that the other driver was dead. The soldier tried to comfort Claimant by telling him that "it happened fast...he never knew what hit him." (Tr. 29).

Approximately forty-five (45) minutes after the IEDs were detonated another military tank approached Claimant's truck. A soldier in the Bradley tank told Claimant to follow the

other tank so that he could “catch-up” to the rest of the convoy. When the convoy arrived at Camp TQ, counselors were brought in to counsel everyone in the convoy and members of the convoy were told to take administrative leave until they felt able to resume working. Most of the members of the convoy, including Claimant took five (5) days of administrative leave. (Tr. 31). According to Claimant, he received a lot of attention from one of the counselors as he was the member of the convoy that actually climbed into the truck that was struck by the IED and was more emotional than the other members of the convoy. (Tr. 131-132).

On August 13, 2005, Claimant met with Father Hogan, a navy chaplain to talk about the events of August 12, 2005. Claimant “cried on his shoulder” and talked with him for quite a while. (Tr. 32). The next day, he met with an EAP counselor. He met again with an EAP counselor on September 1, 2005. (Tr. 32; CX-2, p. 2). According to Claimant, following the August 12, 2005 attack on the convoy, he experienced nightmares and could still see the explosions in his mind. (Tr. 32). Nevertheless, Claimant resumed working with his convoy approximately one (1) week after August 12, 2005. (Tr. 32-33). He continued working with the convoy for approximately three (3) to three and one-half (3½) weeks. During this time, he only confided in a few friends regarding his nightmares and visualizations. Following the three (3) to three and one-half (3½) weeks of his continuing work, Claimant returned to the United States. (Tr. 33).

Upon returning to the United States, Claimant’s wife observed Claimant to be behaving oddly. For approximately one (1) month after his return, he spent most of his time on the computer and did not want to sleep. (Tr. 33). After his initial month back, Claimant obtained a local truck driving job. (Tr. 33-34). According to Claimant, he felt as though everything was fine when he began working for the local company. Eventually, however, he began to feel overwhelmed by depression and anger over the August 12, 2005 IED attack in Iraq. As a result, Claimant did not want to leave his “comfort zone” or be away from his wife. Therefore, while he was at work he would call his wife three (3) to four (4) times a day, sometimes in the middle of the night crying. On some occasions, Claimant’s wife rode along with him on deliveries upon his request. Claimant eventually reached a point where he called his wife and told her that if it were not for her and the children, he would slit his throat. (Tr. 34). Consequently, Claimant’s wife pursued an appointment with an EAP counselor for Claimant. (Tr. 34-35).

Claimant contacted the EAP counselor, Dr. Minix, after he obtained her number from his wife. Dr. Minix referred Claimant to Peggy Ragland. His first appointment with Ms. Ragland was sometime in early April or late March. During her treatment of Claimant, Ms. Ragland referred Claimant to a psychiatrist, Dr. DeSouza, who had “dealt specifically with PTSD.” Dr. DeSouza prescribed Wellbutrin, Cymbalta, and Seroquel for Claimant. (Tr. 35). According to Claimant, the Cymbalta and Seroquel improved his condition. However, he was terminated from his employment with the local trucking company because of his use of Cymbalta as he was told it was not a Department of Transportation (“DOT”) approved medication. (Tr. 36). After his employment with the local trucking company was terminated, Claimant was unemployed for a time until he obtained a position at a local auto shop, which “didn’t work out.” (Tr. 36).

Following his employment with the auto shop, Claimant took a job working for his brother-in-law’s company. (Tr. 36-37). According to Claimant, his brother-in-law “eventually

let him go” as he was not “performing his duties in a timely manner.” (Tr. 37). Claimant’s ability to work has improved, but he feels he needs to “get out from behind the wheel of a truck” because he has difficulties driving, namely, he suffers from “paranoid delusions” which affect his driving. (Tr. 38). Consequently, he has been in contact with Colorado Technical Institute about going back to school and learning a different trade. (Tr. 38-39).

According to Claimant, he was in good health and had never seen a psychiatrist, psychologist, or any other kind of mental health professional prior to going to work in Iraq. (Tr. 16-17). He also had not been previously prescribed any sort of tranquilizers or anti-anxiety medications. (Tr. 16). After he returned from his employment in Iraq, Claimant noticed he was “real short-tempered” with people, including his children. He would “fly off the handle” when his daughter spilled a drink. According to Claimant, his relationship with his children prior to his working in Iraq was a very close relationship and “quite a bit different” than his relationship with his children after he returned from Iraq. (Tr. 37). In his opinion, he is getting better and feeling “normal” through the use of his medications. (Tr. 37-38). At some point, the older brother of the driver of the other truck who was killed in the IED attack wanted to know what happened to his brother. He was not able to obtain information regarding his brother’s death from Employer/Carrier. After approximately a year following the other driver’s death, Claimant felt he was able to tell the driver’s brother what happened. (Tr. 30). Claimant sent the brother an e-mail wherein he described the events of August 12, 2005 and also attached a photograph of the other driver’s truck that he had taken after the truck was struck by the IED. (Tr. 29-31).

On cross-examination, Claimant acknowledged that when he returned to the United States he returned on R&R and had left his belongings and equipment overseas. (Tr. 39-40). He and his family were all aware that he had only returned to the United States for R&R and was supposed to return to his employment in Iraq. He had planned to return to his employment in Iraq on October 5, 2005 and to work for an additional six (6) months. (Tr. 39, 73). However, a week and one-half to two weeks later Claimant discovered that one of his friends was killed in an incident in Iraq. (Tr. 40-41). Claimant was so grief-stricken by the death of his friend that he decided not to return to his employment in Iraq. (Tr. 40-41). He confirmed that his decision to not return to his employment overseas was based on his grief and not because of any fear or anxiety.<sup>6</sup> He figured his nightmares would subside and that he would be able to return to “what [he] was doing.” (Tr. 41).

Claimant confirmed that after he decided not to return to his employment overseas, he began to spend a substantial amount of time on the computer contacting people about Iraq and also working on his website about Iraq, which he initially created during his employment overseas. (Tr. 41-43). He also spent time visiting a website, [AmericancontractorsinIraq.com](http://AmericancontractorsinIraq.com) where he found an on-line support group where he could talk about what happened to him in Iraq. (Tr. 42). This website also contained a link to a webpage regarding PTSD. Although Claimant admitted visiting the website, he denied maintaining that section of the website. He

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<sup>6</sup> A personnel action from November 2005 indicated Claimant abandoned his employment with Employer as he did not return from R&R. (EX-2, p. 17). Had Claimant returned to his employment in Iraq, he would not have resumed his employment as a bobtail driver. Rather, Claimant would have been assigned to an in-camp driver position as he told a supervisor that he did not feel comfortable continuing to drive bobtail. (EX-29, p. 12).

also denied attending a recent convention in Tennessee regarding PTSD where a military doctor met with and talked to civilian contractors suffering from PTSD. (Tr. 70). He additionally denied seeing that military doctor. (Tr. 70-71).

Claimant estimated that during the first six (6) months after he returned to the United States, he “lived on the computer.” (Tr. 43). He even took his laptop with him to work while working for the local trucking company. (Tr. 44). Claimant acknowledged that since he returned to the United States, operation of his website and contact with others regarding Iraq was a major focus of his life. (Tr. 43). He went so far as to attend an american contractors in Iraq convention, on July 8, 2006 in Tennessee. (Tr. 43-44). According to Claimant, his computer usage and contact with people regarding Iraq created friction between himself and his wife. (Tr. 44-45).

Prior to being prescribed Cymbalta, Claimant had been prescribed Lexapro. (Tr. 45-46). According to Claimant, he did not believe there was anything wrong with him when he applied for the job with the local trucking company. He passed the requisite physical examination and made no complaints of physical or psychological ailments. (Tr. 41). Claimant maintained he informed the local trucking company of his prescriptions for both Lexapro and Cymbalta. (Tr. 46, 48). He was surprised to learn that the dispatcher at the local trucking company testified in a deposition that he never told her he was taking Lexapro. He believed he told her he was taking Lexapro because that was his “obligation as a truck driver.” Although he had taken Lexapro, he stopped taking it as it was “knocking him out” and he was afraid he might injure someone while driving because of how drowsy the medication made him. (Tr. 46, 57-58). He had already “unintentionally” run three (3) people off the road while he was driving under the influence of Lexapro although he only reported one (1) incident to the trucking company. (Tr. 58). Claimant was surprised to learn that neither Ms. Ragland nor Dr. Lawhead, noted drowsiness as the reason for his discontinued use of Lexapro. Instead, they noted Claimant’s desire to have a better remission in his depression as the reason for his discontinued use of Lexapro. (Tr. 46-47). As such, Dr. Lawhead switched Claimant’s prescription for Lexapro to a prescription for Cymbalta. (Tr. 48).

Claimant confirmed that the local trucking company relieved him of his driving responsibilities after the company found out he was taking Cymbalta as, according to the trucking company, Cymbalta was not a DOT approved medication. (Tr. 48-49). Claimant was unable to locate any information indicating that Cymbalta was not DOT approved and suspected the trucking company had an “ulterior motive” for wanting to get “rid” of him. (Tr. 49). After being relieved of his driving responsibilities for his use of Cymbalta, Claimant contacted Dr. Lawhead and requested that he provide him with a note stating that he was able to discontinue his use of Cymbalta and continue to drive full duty. (Tr. 49-50). Dr. Lawhead provided Claimant with a note even though Claimant had not discontinued his use of Cymbalta.<sup>7</sup> (Tr. 51-52). Claimant was able to be reinstated as a driver as result of the note from Dr. Lawhead. In total, Claimant lost approximately two (2) days of work after he was relieved of his driving responsibilities. After he was reinstated as a driver, Claimant had approximately one (1) more

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<sup>7</sup> According to Claimant, Dr. Lawhead knew he was not going to stop taking Cymbalta and provided him with the note indicating he had so he could finish his last week of work. (Tr. 52).

week of work before “summer vacation.” (Tr. 50). His schedule at the trucking company was similar to that of a schoolteacher in that he got paid for summer, but did not drive during that time. (Tr. 50-52). According to Claimant, had he discontinued his use of Cymbalta, he could have returned to work for the trucking company after the summer vacation. (Tr. 52-53). Claimant continued to take Cymbalta during his next period of employment working for his brother-in-law. (Tr. 53). Although Claimant continued to take Cymbalta, he nevertheless considered himself to be an “unruly employee.” (Tr. 53-54).

Claimant acknowledged discussing concerns regarding his finances with Ms. Ragland. There had been some over-spending by his family while he was overseas. (Tr. 47). According to Claimant, he and his family’s financial situation was not “in the best shape” after his return to the United States. Their financial situation was exacerbated by Claimant’s decision to not return to his employment in Iraq as he could not earn as much money in the United States as he could overseas. (Tr. 48).

According to Claimant, he was never in a situation where he had to shoot at someone during his employment in Iraq. Instead, as a bobtail driver all he was required to do was to repair disabled vehicles and to assist or pick-up drivers of disabled or damaged vehicles. (Tr. 54). In either instance, military vehicles and personnel were present to assist as well as to provide protection. (Tr. 54-55). On August 12, 2005, Claimant was driving at the rear of the convoy. (Tr. 56). He confirmed that when the IED attack occurred, he saw only smoke and not the blast itself although he heard the blast. (Tr. 57). While in Iraq, Claimant did not sustain any physical injuries. He has, however, suffered from nightmares after his return to the United States and saw a video of the mission where his friend was killed. (Tr. 57, 59-60). Claimant’s recurring nightmare is of him curled-up in the fetal position in the sleeper of his truck while his truck is being “shot full of holes.” (Tr. 58). Claimant has this nightmare approximately once every two (2) weeks. During his nightmare, Claimant hears tapping sounds on his truck like he was being shot at and feels fearful. (Tr. 59). Prior to suffering from this recurring nightmare, Claimant suffered from a recurring nightmare where he would be sitting in a truck and seeing a mushroom cloud of smoke from a blast. (Tr. 60-61).

Claimant acknowledged that he was not at fault for the other driver’s death on August 12, 2005 and that there was nothing he could have done to prevent the driver’s death. He confirmed that the convoy on August 12, 2005 was accompanied by three (3) Bradley vehicles and an Abrams tank. (Tr. 55). He also confirmed that he as well as the remainder of the convoy that was traveling behind the deceased driver’s truck followed the tank out of the “kill zone” after which Claimant re-assumed his position at the rear of the convoy. (Tr. 55-56). He acknowledged that Employer/Carrier made him aware of the risks of his employment overseas, such as being shot at and killed. According to Claimant, it is one thing to be told of the risks of the employment and quite another to actually experience the risks. (Tr. 62).

Claimant confirmed that he wrote a narrative statement regarding the August 12, 2005 IED attack and that he also writes for his website and blog. (Tr. 63-66; EX-4, pp. 13-14). Claimant also confirmed that he was employed, earning \$700.00 a week before taxes. (Tr. 66). Although employed, Claimant enrolled in a criminal justice course so that after graduation he could start a bail enforcement business. (Tr. 66-67). He graduated from the criminal justice

course on March 30, 2007. (Tr. 67). Since his graduation, Claimant and his business partner have been purchasing all “proper equipment” for the business, including Kevlar vests. (Tr. 67-68). Claimant considered purchasing a weapon, but decided after some discussions with local police officers that it would be best to carry tear gas and a stun gun. (Tr. 68). Even though Claimant decided against purchasing weapons for the bail enforcement business, he considered himself capable of carrying a firearm although his wife, brother-in-law, and doctors recommend against it. (Tr. 68-69).

During Claimant’s most recent period of employment, he continued to carry the same backpack with Mag light and computer in it that he carried with him during his employment in Iraq. He no longer carries his knife though as it is considered an illegal weapon in the United States. Besides carrying the same backpack, Claimant also continues to wear his army t-shirts, which aggravates his wife. (Tr. 69).

On re-cross examination, Claimant acknowledged he participated in a couple of interviews with media outlets regarding his employment overseas. (Tr. 77). According to Claimant, he participated in the interviews not for personal gain; but, rather to draw attention to civilian contractors’ need for medical care. (Tr. 77-78). He also acknowledged he continues to maintain his website in order to honor himself, the other drivers in Iraq, as well as military personnel. (Tr. 78-79). He additionally acknowledged that he posted a blog on his website wherein he vented his frustrations regarding continuance of his hearing in this matter and his opinion of Employer/Carrier in addition to Employer/Carrier’s Counsel. (Tr. 80-81).

### **Claimant’s Wife’s Testimony**

Claimant’s wife testified at the formal hearing in this matter on May 25, 2007. Claimant and his wife have been married for approximately nine (9) years. (Tr. 82). According to Claimant’s wife, Claimant did not suffer from any sort of psychological problems or stress prior to his employment in Iraq. She described his personality prior to his departure as “very laid back” and indicated that he got along well with everybody, including his family. While Claimant was overseas, Claimant’s wife had “daily contact” with Claimant through e-mail. (Tr. 83). Claimant did not tell his wife about any of the dangers he faced overseas. Rather, he told her not to believe what she saw on the news. (Tr. 83-84). Claimant’s wife did not learn of the August 12, 2005 IED attack on Claimant’s convoy until either August 14 or 15, 2005 when Claimant called crying and swearing, stating, “I hate them...I want to kill them all” referring to the insurgents. (Tr. 84).

Claimant returned home in September, 2005, shortly after his August 14 or 15, 2005 phone call to his wife. (Tr. 84). Upon his return home, Claimant’s wife noticed changes in Claimant’s personality. He was foul-mouthed, aggressive, not at all laid back like he usually was. During his first couple of months home, he was verbally abusive toward her and their children. After Claimant took the truck driving job with the local trucking company, Claimant’s wife would only see him on the weekends. They kept in touch however, by telephone every night during which time Claimant told his wife he could not drive continue to drive a truck. (Tr. 85). Claimant continued to drive aggressively like he was taught to drive in Iraq. However, he

was no longer driving in Iraq; but, rather was driving to schools in Missouri to deliver food. One day while Claimant was driving for the local trucking company, he called his wife sobbing and told her he did not know what was wrong with him that he had just run a man off the road into a ditch. Claimant did not stop to see if the man was alright, instead he called his wife sobbing. Claimant's wife decided Claimant needed help so she contacted Employer/Carrier's EAP service. (Tr. 86). Employer/Carrier's EAP service put her in contact with Dr. Minix who in turn contacted Claimant. (Tr. 87).

Dr. Minix referred Claimant to Ms. Ragland whom Claimant has been regularly seeing for treatment. (Tr. 87). Claimant's wife has noticed Claimant's condition gradually improving, but also noticed that if he missed any treatment his behavior would regress to his pre-treatment behavior. (Tr. 88, 94-95). When his behavior regresses, he becomes very aggressive and she has to remind him to take his medications. Claimant's wife noticed further that Claimant's medications help to control his condition, but they also make him apathetic. He used to take interest in some of the daily household activities, which he no longer cares to do. (Tr. 88). According to Claimant's wife, prior to his employment in Iraq Claimant was a very loving husband. After his return, he is withdrawn from her, his other family members, and friends. His family and friends no longer want to visit with him. All Claimant wants to do with his time, since his return home is use his computer, which has created friction between him and his wife. (Tr. 89-90, 94). He has also continued to wear the clothes, including camouflage pants and boots that he wore in Iraq. Since he decided to open a bail enforcement business, his wardrobe has changed to more "bounty hunter" type clothes instead of the clothes he wore while in Iraq. (Tr. 90).

Claimant's wife is concerned about Claimant's decision to open a bail enforcement business. She worries that she might get "shot in the head." (Tr. 90). She does not approve of Claimant's owning a handgun because of his condition and only recently found out that he also purchased a shotgun, which worries her even more. (Tr. 90-91). She does not disapprove, however, of Claimant's ownership and use of a taser. According to Claimant's wife, Dr. DeSouza is supportive of Claimant's decision to open a bail enforcement business as she believes it is re-focusing his energy and taking his mind off his condition. (Tr. 91).

On cross-examination, Claimant's wife confirmed that Claimant's social withdraw has remained constant since his return home in September of 2005. It doesn't matter if friends or family members are over to visit, all Claimant does is spend time on his computer, watch "Dog the Bounty Hunter" or play with Star Wars figures although he plays less with his Star War figures than he used to. (Tr. 92-93). Claimant's wife acknowledged she refuses to ride with Claimant because of his reckless driving. She also acknowledged that Claimant's verbal abuse of his family includes his ten (10) year old daughter. In addition, she acknowledged that she disapproves of Claimant's participation in interviews with media outlets. (Tr. 93). She thinks his condition should be private and kept between her and his physicians. (Tr. 93-94). According to Claimant's wife, both she and her ten (10) year old daughter are now being treated for Contact PTSD due to their interaction with Claimant. (Tr. 94).



## **Testimony of John Dorland Griffith, M.D., F.A.P.A.**

John Dorland Griffith, M.D., F.A.P.A. testified at the formal hearing in this matter on May 25, 2007. Dr. Griffith is a board-certified psychiatrist who also works in pharmacology. (Tr. 96, 100). He has also worked as a military doctor, private practice doctor, and as an affiliated doctor with the Veterans Administration ("the VA") where he has provided services since 1965. (Tr. 97, 100). As a military doctor and through his work with the VA, Dr. Griffith was exposed to patients suffering from PTSD. He has continued to work with patients suffering from PTSD through his work as a private practice doctor in addition to his work at M.D. Anderson Cancer Hospital. (Tr. 97, 100). Dr. Griffith has evaluated PTSD patients and has also become familiar with how PTSD patients as well as pseudo-PTSD patients learn about the symptoms of PTSD and how to form support groups. (Tr. 98; EX-20, p. 7). He also become familiar with psychometric testing used to diagnose patients as well as to screen them. (Tr. 98). Dr. Griffith acknowledged that symptoms of PTSD are readily available on a computer through an internet search. He also acknowledged that Claimant had opportunity to learn about PTSD after his return to the United States when he spent most of his time on the internet. (Tr. 127).

According to Dr. Griffith, psychometric testing is required to make a diagnosis of PTSD "if a claim is pending." (Tr. 98). However, his experience with PTSD patients at the VA who made claims for benefits was that the VA did not "typically" rule out malingering. Rather, the VA would put the patient in a group setting with others who have gone through similar experiences. Malingers were identified "pretty quickly" in these group settings. (Tr. 99). Besides treating patients with PTSD, Dr. Griffith has frequently treated patients for major depression in his private practice. (Tr. 100). His private practice also enables him to practice forensic psychiatry, which he has been practicing since 1967. Dr. Griffith has also held several academic posts, including an assistant professorship of psychiatry at the University of Texas Medical School in Houston and an assistant professorship in psychology at M.D. Anderson. (Tr. 101).

During voir dire, Dr. Griffith confirmed that none of the twenty-six (26) publications to his credit concern PTSD. Rather, the majority of his publications are about medication, particularly amphetamine. (Tr. 102-103). Dr. Griffith has been called a national expert on amphetamine. He confirmed that he was a military doctor during the Cold War and that he has worked with the VA "on and off" since 1965. (Tr. 103). According to Dr. Griffith, his work with the VA is in the field of psychiatry and not pharmacology. (Tr. 104).

On direct examination, Dr. Griffith confirmed that throughout his medical career, including his time as a military doctor, private practice doctor, affiliated doctor with the VA, forensic psychiatrist, and professor of psychology and psychiatry, he has encountered PTSD and malingering of PTSD in addition to depression and related problems. (Tr. 104). Dr. Griffith conducted an independent psychiatric evaluation of Claimant on July 15, 2006 at Employer/Carrier's request. He confirmed that in preparing his report regarding Claimant he reviewed Claimant's medical records from Drs. DeSouza, Lawhead, and Strehlow as well as records from Ms. Ragland and the Kansas University in addition to general medical literature. He also confirmed that he reviewed the deposition transcripts from the depositions of Claimant,

Claimant's wife, Claimant's step-son, Ms. Ragland, and Drs. Lawhead, Strehlow, and DeSouza. (Tr. 105-106).

When conducting an independent psychiatric evaluation, Dr. Griffith prefers to obtain a clear background on the patient as well as administer a Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") test. Dr. Griffith uses the MMPI-2 to corroborate his clinical impressions and also uses it to rule out malingering in cases where PTSD patients are pursuing monetary compensation. (Tr. 107-108). According to Dr. Griffith, treating physicians, like forensic psychiatrists, should rule out malingering when treating patients that are seeking monetary compensation. PTSD, according to Dr. Griffith, is an easily imitated syndrome and an individual who exhibits the symptoms may not necessarily have the disorder as the disorder must be impairing. (Tr. 108). To Dr. Griffith's knowledge, the MMPI-2 administered to Claimant by him was the only psychological testing Claimant underwent since he returned from overseas. (Tr. 109).

According to Dr. Griffith, psychiatrists have a "dismal track record" of trying to detect malingering without any sort of psychological testing. He advanced recovered memory syndrome as an example of that "track record" where some practitioners determined that if a person could not remember being sexually abused by a parent, that meant the person was abused. (Tr. 109). Dr. Griffith briefly summarized Claimant's history, including that he was raised by good parents, was given educational opportunities that he did not pursue, portrays his work ethic to be "Presbyterian" although Dr. Griffith would classify him as an underachiever, attended court-ordered anger management and domestic counseling following a domestic disturbance between he and his wife some years back, and that he was involved in a motorcycle accident in 2000, which resulted in severe head and back injuries. (Tr. 110-111). PTSD was raised as a concern following that motorcycle accident. (Tr. 111).

Dr. Griffith concluded after obtaining Claimant's history, administering the MMPI-2, and interviewing Claimant that Claimant was malingering PTSD. According to Dr. Griffith, Claimant exaggerated PTSD to an "impossible degree." He noted that each time Claimant retold the events of August 12, 2005, details would change to his benefit. (Tr. 111). For example, Claimant told Dr. Griffith during his interview with him that he was friends with the deceased driver and only after persistent questioning did he concede that he really did not know the driver.<sup>8</sup> (Tr. 111; EX-20, p. 3). Besides changing details of the events of August 12, 2005 to his benefit, Dr. Griffith also noted that Claimant's eagerness to constantly retell the events of the day was "atypical" of patients with PTSD. (Tr. 111; EX-20, pp. 6-7). According to medical literature, most PTSD patients avoid retelling events as they do not like to talk about them since the events usually involve unpleasant subjects. (Tr. 111-112). Dr. Griffith, therefore, is very vigilant when interviewing patients to see if they exhibit atypical PTSD behavior. (Tr. 112). He observed Claimant to exhibit atypical behavior not only during his interview with him, but also through his eagerness to retell the events to the press, his wife, and internet chat groups. (Tr. 112-113).

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<sup>8</sup> Dr. Griffith noted that Claimant in his deposition which followed his exam with Dr. Griffith, testified that he did not want to give anyone the impression that he was "close friends" with the deceased driver. (Tr. 111; EX-29, p. 16).

Claimant's descriptions of his flashbacks also caused Dr. Griffith to suspect that he was malingering. Claimant described his flashbacks as similar to flashbacks that are depicted in movies. (Tr. 113). According to Dr. Griffith, flashbacks are not typically experienced like flashbacks are depicted in movies. (Tr. 113-114). Rather, flashbacks involve more than one sensation, feel as if they are occurring in the present time, and result in actions and emotions that were appropriate during the time of the trauma. Dr. Griffith determined Claimant's reports that he was suffering flashbacks was suspect since he reported they occur often, are repetitious in nature, and since he was eager to tell "everyone" that he is suffering flashbacks. (Tr. 114). Claimant's report of nightmares also caused Dr. Griffith to suspect Claimant was malingering. (Tr. 114-115). According to Dr. Griffith, nightmares in PTSD patients occur rarely, maybe once a year, and are generally comprised of symbolic content that seems "goofy" because it contradicts what is considered "reality." Claimant's reports of nightmares, according to Dr. Griffith, changed, which he assumed was another embellishment by Claimant. (Tr. 115).

Dr. Griffith found Claimant exaggerated the severity of his symptoms and reported "classic textbook examples" of his symptoms in a "rehearsed manner." (Tr. 116). He also found Claimant exaggerated his role in the events of August 12, 2005 to the extent of making himself "the hero," which is atypical of a PTSD patient since a PTSD patient would not regard himself as a hero. (Tr. 116, 119). He further found that Claimant reported chronic non-fluctuating symptoms that do not improve with time or treatment. (Tr. 117; EX-20, p. 6). According to Dr. Griffith, most civilian patients who suffer from a severe trauma see some improvement in approximately one (1) year. Dr. Griffith considers any PTSD patient who reported no improvement of his condition within a year suspicious. (Tr. 117). Individuals who have suffered "war wounds" are pre-disposed to PTSD. (Tr. 118). Dr. Griffith noted that Claimant was not wounded, nor was his truck damaged. (Tr. 118; EX-20, p. 4). He also noted that Claimant's wearing of the same clothing which he wore in Iraq while home, including to church, was immature and attention-seeking behavior. He further noted that such behavior is atypical of a bona-fide PTSD patient as a bona-fide PTSD patient would avoid that type of behavior and not be theatrical; but, rather taciturn as he is in pain. (Tr. 118).

According to Dr. Griffith, Claimant made no reports of prior psychiatric problems. (Tr. 116). He noted Claimant had a history of "multiple lawsuits" and an unstable work history. (Tr. 117). He also noted that Claimant appeared to use PTSD to express anti-social behavior such as cursing at his wife and children and driving ninety (90) miles an hour in an eighteen (18) wheeler, yet claiming he could not live with himself if he killed someone. According to Dr. Griffith, morals and prohibitions regarding anti-social behavior do not change in PTSD patients simply because they have PTSD. (Tr. 119-120; EX-20, p. 7). Claimant's expressed anti-social behavior is inconsistent with that aspect of PTSD patients. (Tr. 119-120). Dr. Griffith wondered if the "severity of the trauma" suffered by Claimant was sufficient to cause PTSD. (Tr. 120-122; EX-20, p. 7).

The results of Claimant's MMPI-2 indicated Claimant engaged in gross dramatization, exaggeration or faking with extreme scores on the validity scale. (Tr. 122, 124-125; EX-20, p. 4; EX-22, p. 7). According to Dr. Griffith, Claimant's scores on the validity scale showed he was malingering and "faking bad." Dr. Griffith concluded after obtaining Claimant's history,

interviewing Claimant, reviewing Claimant's medical records, and reviewing Claimant's MMPI-2 scores that Claimant was malingering. (Tr. 123). Dr. Griffith shared Claimant's MMPI-2 scores with colleagues who concluded that if Claimant was not malingering or suffering from a personality disorder, he must be an inmate of a state mental institution. (Tr. 124; EX-21, p. 1). In Dr. Griffith's opinion, claiming to suffer from PTSD is an attempt by Claimant to obtain a substantial amount of money without having to go back to Iraq. (Tr. 124-125). Nonetheless, Dr. Griffith acknowledged Claimant was most likely under a lot of stress because of the instant claim such that it would not surprise him if Claimant exhibited legitimate symptoms of depression. However, Dr. Griffith noted that if Claimant were suffering from depression, his condition should have responded to his medication some time ago. (Tr. 125-126).

According to Dr. Griffith, malingering requires a motive. (Tr. 127-128). He identified Claimant's motive as money. (Tr. 128). He noted that there is fewer claims of PTSD made by individuals who can elect to "face the danger" as with civilian contractors versus military personnel who are in the situation under orders and must stay. Dr. Griffith determined from his review of Dr. DeSouza's records and deposition transcript that Dr. DeSouza took no steps in Claimant's case to rule out malingering. Rather, she said she took him at his word. (Tr. 128). According to Dr. Griffith, if a physician plans to testify as to the absence or presence of PTSD in a patient, that physician must take steps to determine whether the patient is malingering. Dr. Griffith also determined from his review of Dr. DeSouza's records and deposition transcript that Dr. DeSouza was incorrect in concluding that Claimant does not suffer from a personality disorder. According to Dr. Griffith, the results of Claimant's MMPI-2 show a personality disorder, passive dependent. In other words, the results showed Claimant is an underachiever who readily accepts failure. Dr. Griffith surmised from his review of Dr. DeSouza's records that she ruled out a personality disorder based on Claimant's reports that he does not drink or get into trouble with the law. According to Dr. Griffith, a patient's reports that he does not drink or get into trouble with the law is insufficient information to rule out a personality disorder. (Tr. 129).

Dr. Griffith noted that theatrical behavior and exaggerated symptoms are a sign of immaturity and suggestive of a personality disorder. (Tr. 129-130). He also noted that people who suffer from PTSD are not necessarily incapacitated as a result of their PTSD. Rather most people with PTSD are functional. (Tr. 130). Dr. Griffith determined that Claimant's responses on his MMPI-2 indicated Claimant was imitating PTSD since he answered true to questions such as "my soul sometimes leaves my body." (Tr. 130-131). According to Dr. Griffith, people who imitate PTSD chose to identify abnormal conditions as conditions from which they suffer and in doing so, they score "off scale" on the MMPI-2. Claimant scored so far "off scale" that if he scores were accurate he would be "frothing at the mouth." (Tr. 131).

On cross examination, Dr. Griffith acknowledged that he determined that Claimant's hostility toward his wife and children was likely a product of Claimant's dislike for his life and his desire to "get away from it." (Tr. 131-133). According to Dr. Griffith, Claimant most likely stays with his wife and children because he does not want to pay child support. Dr. Griffith hypothesized that if Claimant were to obtain disability compensation for PTSD, he could leave his wife and children and not be required to pay child support. (Tr. 131-134). Dr. Griffith acknowledged, however, that he was aware Claimant had been employed since his return to the United States. (Tr. 134-135).

Dr. Griffith acknowledged that Claimant's experience overseas may have aggravated his pre-existing personality disorder. (Tr. 135-136). He also acknowledged that Claimant worked overseas for approximately one (1) year and "did a very good job." (Tr. 137). He reiterated how he believed Claimant made himself out to be a hero by talking about his men, how he rushed to "intervene" in the attack, and how he led his men through a potential mine field, exposing himself to an explosion underneath his truck. (Tr. 137). Dr. Griffith acknowledged that Claimant's responsibilities as a bobtail driver included helping distressed vehicles and driving "off the hard top" for other vehicles in the convoy to follow. (Tr. 137-138). Nevertheless, he again reiterated his belief that Claimant's retelling of the events of August 12, 2005 were to make himself look like a hero by referring to his men and soldiers saluting him with tears in their eyes. (Tr. 138-139). According to Dr. Griffith, soldiers have antipathy for civilian contractors because of the disparity in pay between the two. (Tr. 139-140). Dr. Griffith confirmed he understood Claimant to have testified that he is feeling better since he has been receiving treatment. (Tr. 140).

Dr. Griffith acknowledged he has reviewed five (5) to six (6) cases for insurance carriers where he determined each of the Claimants were malingerers. (Tr. 140). He also acknowledged that he was not trying to diminish Claimant's psychiatric reaction to the events of August 12, 2005 simply because student nurses working in emergency rooms do not claim to suffer from PTSD. (Tr. 140-141). Rather, Dr. Griffith was trying to illustrate that those nurses are exposed to equally hazardous conditions as civilian contractors in combat zones. (Tr. 141). Dr. Griffith acknowledged that he was unaware that civilian contractors do not receive any "debriefings" regarding PTSD at the end of their service. (Tr. 141-142). He also acknowledged that there is no VA hospital for civilian contractors to frequent. However, according to Dr. Griffith, Employer provides reasonable and necessary medical care for civilian contractors who require care. (Tr. 142).

Dr. Griffith confirmed that retelling or discussing a traumatic experience is one way PTSD is treated. He also confirmed that if Claimant had PTSD his retelling of the events of August 12, 2005 would be appropriate. (Tr. 144). According to Dr. Griffith, Claimant does not suffer from PTSD since although Claimant fulfills DSM-IV criteria, he is malingering. (Tr. 144-145). Malingering, according to Dr. Griffith, nullifies any fulfillment of DSM-IV criteria. (Tr. 145). He acknowledged that if Claimant's motive for claiming to suffer PTSD was money, he would make more money had he returned to his employment overseas. (Tr. 145-146). He identified notoriety as another motive for Claimant's claim that he suffers from PTSD. (Tr. 146). He acknowledged, however, that a claimant might speak to the press in order to garner attention for himself so that he might receive treatment for his condition. (Tr. 148).

Dr. Griffith acknowledged that there are some civilian contractors who suffer from PTSD as a result of their employment experience in combat zones. (Tr. 146-147). He also acknowledged that most civilian contractors are unable to obtain treatment from a VA hospital. (Tr. 147). He further acknowledged that a soldier that suffers from PTSD could seek treatment from a VA hospital. (Tr. 148-149). A soldier could also obtain disability compensation as a result of his suffering from PTSD. (Tr. 149).

On re-direct examination, Dr. Griffith confirmed that in order for a patient to be properly diagnosed with PTSD, the patient must satisfy DSM-IV criteria without malingering. (Tr. 149-150). He also confirmed that a patient cannot “boot strap” himself into a PTSD diagnosis by claiming aggravation of an underlying psychological condition. Dr. Griffith further confirmed that his diagnosis that Claimant suffers from a pre-existing personality disorder does not affect his conclusion that Claimant does not suffer from PTSD. (Tr. 150). In addition, he confirmed that he was not contesting that Claimant says he suffers from symptoms of PTSD. Rather, he contests that Claimant actually suffers from symptoms of PTSD. (Tr. 151). According to Dr. Griffith, Claimant had intended to return to his employment in Iraq after his R&R and did not advance a claim of PTSD at that time. (Tr. 150).

On re-cross examination, Dr. Griffith acknowledged that it was possible that Claimant suffered an aggravation of his pre-existing personality disorder, but determined that any medical probability of an aggravation that the condition could not be gauged. (Tr. 152-153, 155). According to Dr. Griffith, a personality disorder is fixed throughout a person’s lifetime. In Claimant’s case, he determined Claimant was a passive dependent who identifies with his mother and “perhaps” seeks her attention by having a need to fail. (Tr. 153). Claimant’s view of his overseas employment experience as an additional failure, according to Dr. Griffith, might be consistent with the personality disorder from which he suffers. (Tr. 154-155).

On re-direct examination, Dr. Griffith acknowledged that during his interaction with Claimant, Claimant’s pre-existing personality disorder was apparent through Claimant’s unusual weepiness that he determined was a regression to childhood behavior of “mother come and get me, mother hold me, mother comfort me.” (Tr. 155-156). On re-cross examination, Dr. Griffith confirmed that his conclusion was that Claimant suffered from a personality disorder prior to his employment in Iraq. (Tr. 156-157).

### **Deposition Testimony of Peggy J. Ragland, MSW, LSCSW**

Peggy J. Ragland, MSW, LSCSW testified by deposition on August 29, 2006. Ms. Ragland is a degreed master’s level social worker in the state of Kansas with two (2) years post-supervision, or an LSCSW. (EX-30, p. 3). Ms. Ragland practices as a psychotherapist and has practiced psychotherapy since 1990. (EX-30, p. 3-4). Her practice consists of treating patients with PTSD related to abuse and violence, domestic violence, crisis intervention, and trauma work in addition to treating patients with problems stemming from child abuse, schizophrenia, bipolar disorder, and depression. (EX-30, p. 4). Ms. Ragland treated Claimant from March 1, 2006 to August 14, 2006. (EX-30, p. 3). She was asked to treat Claimant by Dr. Minix who Claimant contacted through Employer’s EAP service. (EX-30, pp. 5, 10). Dr. Minix told Ms. Ragland that Claimant was involved in an incident in Iraq where he saw someone violently killed and discovered all that was left of the man was his arm which traumatized him. (EX-30, p. 5).

Prior to treating Claimant, Ms. Ragland did not have “extensive” experience treating individuals with psychological disorders who had been involved in combat. (EX-30, p. 3). Since 1979 Ms. Ragland estimates that she has worked with “half a dozen” PTSD patients, but Claimant was the only non-military PTSD patient with whom she has worked. (EX-30, pp. 3-4).

According to Ms. Ragland, non-military PTSD patients seeking disability compensation present a different scenario than military personnel PTSD patients. (EX-30, p. 4). Ms. Ragland first met with Claimant on March 1, 2006. (EX-30, p. 5). Claimant reported to Ms. Ragland that he suffers from irritability, anger outbursts, and depression since his return from overseas where he witnessed an explosion and death of a co-worker. He also reported that he suffers from recurrent images, thoughts, and nightmares as well as periodic flashbacks. (EX-30, p. 6).

According to Ms. Ragland, Claimant related to her that he was a tractor-trailer driver, married with two (2) biological children and two (2) step-children. He reported that his marriage was a good marriage, but was experiencing financial difficulties which prompted him to seek employment with Employer/Carrier. He also reported that he had a history of financial problems and indicated that he was still experiencing financial difficulties after his return from his employment overseas. Claimant described his childhood as normal but that he suffered from problems related to ADD. She noted that Claimant was working full-time as a tractor-trailer driver when she saw him in March, 2006. Claimant informed Ms. Ragland of the amount of money he made tax-free while working overseas and indicated that there had been some over-spending by his wife while he was away so that when he returned to the United States there was no money left. (EX-30, p. 7). Ms. Ragland noted that although Claimant related suffering financial difficulties after his return to the United States, his experience overseas is what she mainly discussed with him. (EX-30, p. 8).

Claimant reported to Ms. Ragland that he witnessed an explosion and saw the remains of his co-worker who was struck by the explosion. (EX-30, p. 8). Although Claimant was not directly at risk in the explosion, according to Ms. Ragland, the situation was nonetheless traumatizing as he knew there was someone in the truck that was struck by the explosive device. (EX-30, pp. 8-9). After witnessing the explosion and seeing the remains of his co-worker's body, Claimant reported to Ms. Ragland that he was in shock and sick to his stomach and not fearful for his own life. According to Ms. Ragland, PTSD can be progressive so a patient may be able to function for some time after the traumatic event before the disorder becomes disabling. A patient would, however, want to remove himself from the "traumatic environment." Although a patient would want to remove himself from the "traumatic environment," Ms. Ragland did not feel comfortable saying that all patients would remove themselves from that environment. (EX-30, p. 9).

Ms. Ragland concluded that Claimant suffered from the effects of post-combat PTSD. (EX-30, p. 9). She determined that he suffered from PTSD because of his reported depression, inability to continue to work, nightmares, flashbacks, and mood changes. (EX-30, p. 10). Claimant reported to Ms. Ragland that he suffers from a recurring nightmare one (1) to two (2) times a week wherein he dreams of the events of August 12, 2005. (EX-30, pp. 10-11). He also reported that the flashbacks from which he suffers occur when he drives. (EX-30, p. 10). She noted that Claimant was on medication that was helping, but not "helping a lot." (EX-30, pp. 10-11). She also noted that the medication was helping control Claimant's depression, which she categorized as major depression, single episode. The medications Claimant was taking were Seroquel and Cymbalta, which were prescribed to him by Dr. DeSouza. Ms. Ragland referred Claimant to Dr. DeSouza after he began exhibiting phobias that she felt needed to be addressed. According to Ms. Ragland, Claimant had a phobia of driving. (EX-30, p. 11). Prior to being

prescribed Cymbalta, Claimant had been prescribed Lexapro which according to Ms. Ragland, did not help to alleviate his symptoms of depression. After having his prescription for Lexapro switched to Cymbalta, Claimant was prevented from fulfilling his job responsibilities for a local trucking company as he was told Cymbalta was not a DOT approved medication. Ms. Ragland could not explain why Claimant's prescription for Cymbalta was not switched for a DOT approved anti-depressant. (EX-30, p. 12).

According to Ms. Ragland, Claimant reported to her during his March 1, 2006 appointment with her that he suffered from changes in his mood. (EX-30, pp. 9-10). Ms. Ragland understood Claimant intended to return to employment overseas after his R&R. He reported to her that he decided not to return to his employment overseas because of grief he was experiencing after hearing about one of his friends being killed. Ms. Ragland decided to treat Claimant with cognitive therapy and supportive therapy techniques. (EX-30, p. 10). According to Ms. Ragland, at the time of her deposition Claimant was working for his brother performing some sort of construction work. (EX-30, p. 11). Also at the time of her deposition, Ms. Ragland intended to continue treating Claimant with her diagnostic formulation that she developed during her initial appointment with Claimant. A patient's condition may not respond to treatment immediately, according to Ms. Ragland, since PTSD is a progressive illness. (EX-30, p. 12). However, she acknowledged that a patient's involvement in litigation is relevant factor in the patient's diagnostic formulation. (EX-30, p. 13).

According to Ms. Ragland, in diagnosing someone with PTSD it is necessary to rule out malingering. Ms. Ragland ruled out malingering in Claimant's case by interviewing him and visually observing him during the interview. She also consulted with Dr. DeSouza who concurred in her diagnosis of Claimant. She was unable to say whether Dr. DeSouza had performed any psychometric testing on Claimant to rule out malingering. (EX-30, p. 11). Ms. Ragland "took Claimant at his word" when she evaluated him and ultimately determined based on Claimant's reported symptoms that Claimant suffered from PTSD. To Ms. Ragland's recollection, Claimant only entertained suicidal thoughts when he returned to see her after an appointment with Dr. DeSouza. (EX-30, p. 13). According to Ms. Ragland, Claimant told her that he wished he had been the one who had been killed on August 12, 2005 instead of the other driver. (EX-30, pp. 13-14). In relating his personal history to Ms. Ragland, Claimant did not tell Ms. Ragland that he suffered a severe injury to his head in 2000 as the result of a motorcycle accident. He also did not tell Ms. Ragland that he suffered an injury to his back while working for another employer after his return to the United States. He did, however, tell Ms. Ragland of his problems with ADD. (EX-30, p. 14).

### **Deposition Testimony of Jeff Lawhead, M.D.**

Jeff Lawhead, M.D. testified by deposition on September 25, 2006. Dr. Lawhead specializes in family practice and has been Claimant's treating physician since 1990. Dr. Lawhead noted that on May 18, 1998, Claimant was placed on Wellbutrin to help him to stop smoking. (EX-32, p. 3). In July of 2000, Claimant was involved in a motorcycle accident for which he was hospitalized at the Kansas University Medical Center. (EX-32, p. 2). Dr. Lawhead treated Claimant after his release from the medical center. (EX-32, pp. 2-3). Claimant



suffered a fairly severe head injury with some indications of shearing of brain matter as well as loss of consciousness, a subdural hematoma, and a concussion as a result of the accident. Following his release from the medical center, Claimant experienced symptoms of post-concussion syndrome, specifically, Claimant suffered from headaches. At the time of the accident, Claimant was still taking Wellbutrin to help him to stop smoking, which according Dr. Lawhead, was not unusual since many smokers “fall off the wagon” when they are trying to stop smoking. (EX-32, p. 3).

Dr. Lawhead met with Claimant on August 18, 2000 for a follow-up appointment. (EX-32, p. 3). Claimant complained of being depressed. Consequently, Dr. Lawhead referred Claimant to a neurologist for a consultation. (EX-32, p. 4; EX-3, pp. 25-26). Claimant was found to be suffering from depression and PTSD. Dr. Lawhead concluded Claimant suffered from PTSD as Claimant harbored anxiety over riding motorcycles and driving. (EX-32, p. 4). Dr. Lawhead referred Claimant to a local psychiatrist, Dr. Pfeifer, for treatment. (EX-32, p. 4; EX-3, p. 20). He hoped Dr. Pfeifer would be able to identify the extent to which Claimant’s PTSD was attributable to the motorcycle accident and the extent to which the disorder may have been pre-existing. He was unable to confirm whether Claimant obtained treatment from Dr. Pfeifer. Dr. Lawhead prescribed Neurontin, Darvocet, and Xanax for Claimant, but could not recall whether he prescribed any particular medication for treatment of Claimant’s PTSD. (EX-32, p. 4).

According to Dr. Lawhead, it is possible for a person who suffers a head injury, but who does not experience any residual disability, to suffer from depression or PTSD simply due to trauma to the brain. Dr. Lawhead met with Claimant on December 18, 2000 for a follow-up appointment and noted that Claimant was continuing to exhibit symptoms of PTSD, but was not suffering from complications of PTSD. (EX-32, p. 5; EX-3, p. 19). Dr. Lawhead based his impression of Claimant’s condition on Claimant’s comments made to him during the December 18, 2000 appointment. (EX-32, p. 5). Dr. Lawhead met with Claimant again on February 17, 2004 for purposes of completing a DOT physical examination. (EX-32, p. 5; EX-3, pp. 9-12). Dr. Lawhead noted only that Claimant was mildly fatigued. Claimant was seen again on January 3, 2006 at which time he was complaining of respiratory problems. (EX-32, p. 5; EX-3, p. 8). He did not complain of any anxiety or psychological problems at that time. (EX-32, p. 5). Dr. Lawhead noted that Claimant was taking Ambien, but was unaware of who prescribed the Ambien for Claimant. (EX-32, pp. 5-6).

On April 15, 2006, Claimant met with Dr. Lawhead and complained of anxiety and depression. Dr. Lawhead noted that Claimant was on several medications, which were not improving his condition. (EX-32, p. 6). Dr. Lawhead diagnosed Claimant as suffering from PTSD as a result of his experience in Iraq. (EX-32, pp. 6-7). He noted that Claimant’s PTSD symptoms from which he suffered following the incident in Iraq were unrelated to Claimant’s motorcycle accident in 2000. (EX-32, p. 7). Claimant was taking Lexapro per Dr. Lawhead’s recommendation. (EX-32, pp. 6-7). Besides diagnosing Claimant with PTSD, Dr. Lawhead also diagnosed Claimant as suffering from ADD. He noted, however, that Claimant’s ADD most likely developed in childhood rather than upon his return to the United States. Dr. Lawhead prescribed Concerta for Claimant to try to alleviate his ADD symptoms. He also switched Claimant’s Lexapro prescription to a prescription for Cymbalta. (EX-32, p. 7). According to Dr.

Lawhead, he switched Claimant to Cymbalta so that Claimant could have the benefit of a serotonin blocker and norepinephrine medication as Claimant reported no improvement on Lexapro, which is purely a serotonin blocker. (EX-32, pp. 7-8).

Claimant reported to Dr. Lawhead that he was having difficulty recovering from the loss of a “comrade” and was experiencing anxiety and depression. Dr. Lawhead noted that Claimant did not have a “good result” with Cymbalta. Some time after his April 15, 2006 appointment with Dr. Lawhead, Claimant called Dr. Lawhead and requested a note, stating that he was medically stable and could work without the use of Cymbalta. Claimant informed Dr. Lawhead that his employer had instructed him to stop driving because of his use of Cymbalta. Dr. Lawhead provided Claimant with a note indicating that he was medically stable and could discontinue his use of Cymbalta and return to full duty. Dr. Lawhead concluded per Claimant’s reports to him that Claimant was sufficiently stable and no longer needed to use an anti-depressant. Nevertheless, he encouraged Claimant to see him for an appointment to ensure that he was sufficiently stable to function without an anti-depressant. (EX-32, p. 8). As far as Dr. Lawhead knew, Claimant stopped using Cymbalta “cold turkey.” According to Dr. Lawhead, Claimant was on a starter dose of Cymbalta and the low dosage appeared to have improved his condition. Claimant never returned to Dr. Lawhead for a follow-up appointment. Since Dr. Lawhead had not seen Claimant since April 2006, Dr. Lawhead was unable to offer an opinion as to Claimant’s present psychological state. As of his last contact with Claimant, Dr. Lawhead understood Claimant to be capable of working full duty without the use of Cymbalta. (EX-32, p. 9).

On cross-examination, Dr. Lawhead indicated he referred Claimant to Ms. Ragland for treatment. (EX-32, pp. 9-10). According to Dr. Lawhead, Claimant’s PTSD that resulted from his motorcycle accident seemed to have resolved following that accident since Claimant did not exhibit any “PTSD-like” symptoms. On re-direct examination, Dr. Lawhead acknowledged he provided Claimant with a letter dated May 19, 2006 wherein he indicated Claimant was on medication and unable to continue to work. (EX-32, p. 10; EX-3, p. 21). He also acknowledged that the letter contradicted the note which he provided to Claimant for his employer. He indicated he provided the letter to Claimant upon Claimant’s request and acknowledged that he did not conduct a physical examination of Claimant. He opined that Claimant had suffered an exacerbation of his symptoms. He could not identify, however, what medication Claimant was taking on May 19, 2006. (EX-32, p. 10).

### **Deposition Testimony of Cherilyn DeSouza, M.D.**

Cherilyn DeSouza, M.D. testified by deposition on January 26, 2007. Dr. DeSouza completed her medical schooling in Bombay, India and a residency in psychiatry at Kansas University Medical Center. After her residency, Dr. DeSouza worked part-time as a faculty member at Kansas University after which she worked part-time at a local VA hospital and part-time in private practice. Currently, Dr. DeSouza is employed full-time by the VA hospital as chief of the mental health department and is also an associate professor at Kansas University. (EX-34, pp. 3, 21). As chief of the mental health department, Dr. DeSouza handles mainly administrative matters for the VA hospital. She does, however, also run an in-patient unit where

she supervises residents that admit patients. The residents in the in-patient unit treat patients with variety of ailments including psychosis, mood disorders, PTSD, and dementia. (EX-34, p. 4). Dr. DeSouza estimated that she has treated a couple thousand patients with PTSD in her career thus far by virtue of her work with the VA hospital. (EX-34, pp. 3, 21).

Dr. DeSouza specializes in general adult psychiatry and has practiced psychiatry since 1978. In her practice she has encountered veterans of combat situations, including veterans from recent mid-eastern conflicts. (EX-34, pp. 3-4). She has also been required to participate in depositions where her patients were involved in litigated matters. In this case, Dr. DeSouza is Claimant's treating psychiatrist. (EX-34, p. 4). She diagnosed him as suffering from PTSD. She concluded Claimant suffered from PTSD since he was exposed to an "extreme traumatic event" and reported that he was experiencing recurrent nightmares where the events of August 12, 2005 were replayed, flashbacks, he was isolating himself from his family, having mood problems, anger outbursts, sleep disturbances, crying spells, and suicidal ideations. (EX-34, pp. 9, 11-12). Ordinarily, these symptoms manifest and affect a patient's general day-to-day functioning. Dr. DeSouza acknowledged that in that respect Claimant's continuing to drive tractor-trailer trucks could be viewed as inconsistent with PTSD since that was the position he held when he witnessed the traumatic event. But, rather than view Claimant's continuing to drive tractor-trailer trucks as inconsistent with PTSD, Dr. DeSouza preferred to view it as a "strength" of Claimant wanting to be able to support his family. (EX-34, p. 9).

During her treatment of Claimant, Dr. DeSouza did not review any records from Ms. Ragland or any records regarding Claimant's motorcycle accident. Since she did not review any medical records regarding Claimant's motorcycle accident, Dr. DeSouza was unaware of the outcome of Claimant's treatment in that respect. All Claimant told Dr. DeSouza was that he was involved in a motorcycle accident in 2000 where he suffered an injury to his back. Dr. DeSouza was, therefore, unaware that Claimant was unconscious for more than one (1) day and had suffered PTSD and depression as a result of the accident. (EX-34, p. 5). Besides not reviewing any of Claimant's medical records, Dr. DeSouza also did not perform any psychometric testing on Claimant. Dr. DeSouza determined Claimant was not malingering because he exhibited "cardinal symptoms" of PTSD and responded to treatment when she started to treat him for PTSD with anti-depressants. (EX-34, pp. 9-10). According to Dr. DeSouza, a diagnosis of PTSD is based solely on a patient's reported symptoms. (EX-34, p. 10).

During her treatment of Claimant, Dr. DeSouza also did not review any deposition transcripts or other documents related to Claimant's instant claim. According to Dr. DeSouza, she has not provided treatment to any civilian contractors other than Claimant. (EX-34, p. 5). Ms. Ragland referred Claimant to Dr. DeSouza for treatment. Ms. Ragland refers anywhere between five (5) to ten (10) patients a year to Dr. DeSouza. Ms. Ragland and Dr. DeSouza used to work together. Therefore, if one of Ms. Ragland's patients needs medication, she refers that patient to Dr. DeSouza. Dr. DeSouza only spoke briefly to Ms. Ragland about Claimant's condition. According to Dr. DeSouza, her role as a psychiatrist is to "deal with medication." If a patient needs psychotherapy or counseling, Dr. DeSouza's refers that patient to another healthcare professional for treatment. (EX-34, p. 6).

She acknowledged that medical students and nurses are exposed to patients with very serious injuries and even witness deaths of some patients. She also acknowledged that those nurses and medical students do not suffer from PTSD. (EX-34, pp. 6-7). She further acknowledged that if serious injuries and death bothered the nurses or students, they would probably quit the field of medicine. According to Dr. DeSouza, malingering must be considered in a litigated case involving PTSD. Since a PTSD patient in the VA hospital is usually seeking compensation, secondary gain is something which Dr. DeSouza is alert to. Money, attention, and restrictions from working are examples of secondary gain which might motivate a patient in such instances. (EX-34, p. 7). In the instant case, although Claimant could obtain disability compensation that would exceed any amount he could earn working, Dr. DeSouza did not consider that a motivator of secondary gain because of the severity of Claimant's symptoms. (EX-34, pp. 8-9). Nevertheless, she acknowledged that the possibility of obtaining disability compensation "plays" some part in how well a patient progresses. (EX-34, p. 9). When considering whether Claimant was malingering, Dr. DeSouza also considered whether Claimant suffered from a personality disorder. She determined that his lack of previous psychiatric help as well as anti-social traits such as not getting into trouble with the law, drinking, abusing his wife or children, or shoplifting showed that he did not suffer from a personality disorder. (EX-34, pp. 18-19).

According to Dr. DeSouza, some PTSD patients find it therapeutic to continually retell and resurrect details of a traumatic event. (EX-34, pp. 7-8). Other patients prefer to "put it behind them and move on." Most treatments, however, are "geared" toward having the patient retell and relive the events so that the patient can work his way through the experience. Since patients differ, Dr. DeSouza could not offer an estimate of time as to when a patient should begin to improve. However, she acknowledged that patients who do not want to get better will not get better. (EX-34, p. 8). She met with Claimant on August 6, 2006 and, at that time, did not know Claimant was involved in litigation. She did not become aware of the litigation until approximately "halfway" through treating Claimant. (EX-34, p. 12). On August 6, 2006, Claimant reported the events of August 12, 2005 to Dr. DeSouza and complained of suffering from nightmares and flashbacks since August 12, 2005. (EX-34, pp. 12-13). He also reported that he quit his employment with a local trucking company where he worked after his return to the United States because he could not function. According to Dr. DeSouza, she would have restricted Claimant from driving had she treated him then because of his suicidal ideations. (EX-34, p. 13). She prescribed a mood stabilizer, Seroquel, for Claimant. (EX-34, p. 14).

Dr. DeSouza noted that Claimant tended to wear the clothes he wore overseas and showed up to his first appointment dressed in military gear. According to Dr. DeSouza, Claimant stopped wearing those clothes around his third appointment, though he occasionally appeared wearing the same clothes after that. Dr. DeSouza found nothing odd or unusual about Claimant continuing to wear his "military gear." (EX-34, p. 13). She also noted that Claimant was not taking his Cymbalta as prescribed. She opined that he was not taking his medication as prescribed because no one had explained to him how often he should take the medication. In September 2006, Dr. DeSouza increased Claimant's prescription for Cymbalta, which was originally prescribed by Dr. Lawhead, to 60mg twice a day. (EX-34, p. 14). On November 16, 2006, she also prescribed Wellbutrin for Claimant as he reported that the Cymbalta was no longer working. She recommended Claimant continue to take his Cymbalta in addition to the

Wellbutrin. According to Dr. DeSouza, neither Cymbalta nor Wellbutrin interfered with Claimant's ability to work. (EX-34, pp. 17, 20).

On January 18, 2007, Claimant reported to Dr. DeSouza that his condition had improved slightly even though he had not taken any Wellbutrin as instructed. Claimant met again with Dr. DeSouza on January 18, 2007. (EX-34, p. 17). She determined that at that point Claimant had "definitely improved." (EX-34, pp. 17-18, 20). She noted that he never made any mention to her of having a fear of driving and opined that he would not have any difficulties driving so long as he did not encounter anything that reminded him of Iraq. (EX-34, pp. 19-20). She determined that Claimant should continue to improve with treatment, but would probably never be cured. According to Dr. DeSouza, PTSD patients are never really cured, but with treatment should be able to function as they did prior to the traumatic event. (EX-34, p. 20).

In Dr. DeSouza's opinion, Claimant is capable of working. At the time of her deposition, he was employed as commercial truck driver. He was experiencing difficulties with his condition because of his employment as he was still suffering flashbacks. (EX-34, pp. 10-11). The areas through which Claimant has to drive for his employment were rundown and reminded him of Iraq. Therefore, Dr. DeSouza tried to encourage Claimant to distract himself from that environment while he is driving through it. Ultimately, Dr. DeSouza would prefer Claimant not work as a driver. (EX-34, p. 11). Nevertheless, she concluded Claimant was able to be employed as a commercial truck driver. (EX-34, p. 20). When Claimant first met with Dr. DeSouza, he complained of financial difficulties. Dr. DeSouza determined that Claimant's financial difficulties "exaggerated" his anxiety. (EX-34, p. 18).

On cross examination, Dr. DeSouza indicated she would recommend Claimant not continue in the same line of work as his work in Iraq. She also indicated that any PTSD or depression that Claimant suffered after his motorcycle accident did not make him any more susceptible to PTSD as a result of the events of August 12, 2005. (EX-34, p. 21). She acknowledged that prior to his employment experience overseas, Claimant appeared to be stable and in good mental health. (EX-34, pp. 21-22). Dr. DeSouza concluded in reasonable medical and psychiatric probability that the events of August 12, 2005 caused Claimant's PTSD. She indicated that she did not think Claimant was malingering. (EX-34, p. 22).

### **Deposition Testimony of Michael Weatherly**

Michael Weatherly testified by deposition on October 25, 2006. Ms. Weatherly is the vice president of logistics of the local trucking company where Claimant was employed after he returned to the United States. (EX-33, p. 2). Ms. Weatherly has held the position of vice president of logistics for the past three (3) years. (EX-33, pp. 2-3). Her job duties included hiring and firing. Claimant applied for a position with Ms. Weatherly's company on October 3, 2005 in response to an on-line ad for drivers that the company had posted. According to Ms. Weatherly, interested applicants are instructed to submit their resumes on-line. Qualified candidates are then asked to come into the office to fill out an application. If the candidate's qualifications meet the company's needs, the candidate is then scheduled for an interview and, if he is offered a position, he is then scheduled for a drug screen and physical. (EX-33, p. 3).

Claimant passed his drug screen and physical and was hired by the local trucking company. According to Ms. Weatherly, Claimant mentioned he had worked for Employer in Iraq and was looking for local employment since his "one year duty" with Employer was over. (EX-33, p. 3). Claimant did not report suffering a previous head injury, loss of consciousness, or fractures to his back to Ms. Weatherly. (EX-33, pp. 3-4). He also did not disclose any history of depression or PTSD. Prior to being hired, Claimant gave no indication that he suffered from depression or anxiety. According to Ms. Weatherly, the local trucking company does not perform any kind of psychoanalysis of prospective employees. The company leaves it to the examining physician to determine if there is a problem with the prospective employee. On October 3, 2005, Claimant passed his physical exam and was found to be fit to drive a tractor-trailer. Ms. Weatherly could not recall Claimant acting depressed. Rather, she witnessed him to behave a little "gloom and doom" when things on his route were not progressing perfectly. (EX-33, p. 4). Claimant tended to worry that he was going to be fired for not doing a "good enough job" or was running a little late. (EX-33, pp. 4-5). Other than his occasional tendency to worry about losing his job, Ms. Weatherly observed Claimant to be a "pleasant normal person." (EX-33, p. 5).

Claimant communicated with Ms. Weatherly at least two (2) to three (3) times a week. (EX-33, p. 6). According to Ms. Weatherly, she was unaware that Claimant was taking Lexapro. He eventually informed her that he was taking Cymbalta for PTSD. Upon learning of his usage of Cymbalta, Ms. Weatherly restricted Claimant from driving until she could find out whether Cymbalta was a DOT approved medication. In Ms. Weatherly's opinion, drivers with commercial driving licenses ought to know that they must disclose any medications they are taking to their employer due to DOT regulations. (EX-33, p. 5). To her knowledge, no one in the company witnessed any mood changes or attitude problems with Claimant. When Claimant eventually disclosed to Ms. Weatherly that he was taking Cymbalta she believed he did so because he had talked to a lawyer and thought that the local trucking company might have to get "involved." He told her that he had been seeing a psychiatrist and had been taking Cymbalta for about a week. He also told her that he did not tell her earlier because it was "embarrassing." (EX-33, p. 6).

Ms. Weatherly contacted the company's consulting physician to see whether Claimant could continue to drive for the company on Cymbalta. (EX-33, p. 6). The physician informed Ms. Weatherly that Claimant could not continue to drive while taking Cymbalta. (EX-33, pp. 6-7, 70). Ms. Weatherly informed Claimant that same day that he could not continue to drive for the company while on Cymbalta. To the best of her recollection, Claimant had finished his route and was not in the office when she informed him in a telephone conversation on his cell phone that he could not continue to drive for the company while on Cymbalta. According to Ms. Weatherly, Claimant told her his doctor said it was safe for him to drive while on Cymbalta. Ms. Weatherly informed him that the company's consulting physician said it was not and that if he insisted that it was she needed a note indicating that it was safe for him to drive while on Cymbalta from his doctor. She recalled Claimant discussing the matter "back and forth" with his doctor who ultimately determined Claimant was medically stable and, accordingly, could "go off" the medication. Ms. Weatherly informed Claimant that although his doctor said he was medically stable and could "go off" the medication, she still needed a note from his doctor to that

effect. (EX-33, p. 7). Claimant provided Ms. Weatherly with a letter dated April 21, 2006 from his doctor, Dr. Lawhead, which indicated that Claimant was medically stable and could discontinue his use of Cymbalta and return to full duty. (EX-33, pp. 7, 69). After receiving this letter, Claimant was permitted to resume driving for the company. In all, Ms. Weatherly estimated Claimant was off-work for approximately two (2) days. (EX-33, p. 7).

At the time Claimant was permitted to resume driving for the company, there was approximately one (1) week left in his work schedule before he would be off for summer. According to Ms. Weatherly, in order for a driver to get paid for summer he must finish his work schedule. Claimant finished the last week of his work schedule with the company after which he told Ms. Weatherly that he resumed seeing a psychologist or psychiatrist and was placed back on his medication. (EX-33, p. 7). Claimant was not able to continue working for the company after that as he did not have a valid commercial driver's license so long as he was taking Cymbalta. The company was notified sometime in July 2006 in a letter from Dr. Lawhead that Claimant would not be able to continue to drive for the company. (EX-33, pp. 7-8, 66). According to Ms. Weatherly, the company took the letter to mean Claimant was resigning from his employment with the company. Had Claimant not been placed back on Cymbalta, Ms. Weatherly indicated Claimant would have been permitted to continue his employment with the company. Prior to receiving the July 2006 letter from Dr. Lawhead, Ms. Weatherly had suggested to Claimant that he try to find a medication with the same effects as Cymbalta that was DOT approved. (EX-33, p. 8).

According to Ms. Weatherly, Claimant never told her of any "near miss" accidents when he was driving. Ms. Weatherly was only aware of Claimant being involved in one accident where he hit a parked car. She explained the policy of the local trucking company regarding drivers being involved in accidents as a type of "three strikes your out" policy. Therefore, the accident in which Claimant was involved would not have created a basis for Claimant to be fired. (EX-33, p. 6). On cross examination, Ms. Weatherly indicated Claimant was a straightforward and cooperative employee. (EX-33, p. 8).

### **Deposition Testimony of Claimant's Stepson**

Claimant's stepson testified by deposition on January 26, 2007. Claimant's stepson has known Claimant since April 1998. (EX-35, p. 3). He is twenty-three (23) years old and works in construction. He worked with Claimant when Claimant worked for his brother-in-law after he returned to the United States. He has noticed that since Claimant returned to the United States he is short-tempered, upset, combative, defensive, and swears at his wife and daughter. Prior to going overseas, he was non-confrontational. (EX-35, p. 4). Now he is angry, emotional, and cries "a lot." (EX-35, p. 6). He also now wears the same clothes he wore while he worked overseas and carries the same backpack. He no longer wears "typical" stepfather clothes such as shorts and a Hawaiian shirt. (EX-35, p. 7). In Claimant's stepson opinion, Claimant spends too much time talking about his experience in Iraq. He noted that he has not seen much change in Claimant's behavior despite Claimant's treatment with Ms. Ragland and Dr. DeSouza. (EX-35, pp. 8, 12-13).

Claimant's stepson had occasion to ride along with Claimant when he was working for the local trucking company. (EX-35, p. 8). According to Claimant's stepson, Claimant drove aggressively, would exceed the speed limit, and swerve across lanes. (Ex-35, pp. 8-9). He has observed Claimant experience flashbacks where he "trances" out and the hairs on the back of his head stand up. He also observed him drop to the ground on the Fourth of July when he heard a firecracker. (EX-35, pp. 9-10). During the time he worked with Claimant, Claimant's stepson noticed Claimant was not as efficient a worker as he could have been because he was a "perfectionist." According to Claimant's stepson, when working in commercial painting one cannot be a perfectionist because if one were, the painting would never get done. Besides not being as efficient a worker as he could be, Claimant's stepson also noticed Claimant become depressed because he did not think he was doing a good job and was working at a slower pace than the other painters. Prior to going overseas, Claimant's stepson indicated Claimant was a happy, carefree, energetic worker. After returning to the United States, Claimant's stepson indicated Claimant now lets every little thing at work "get to him." (EX-35, p. 11).

## **IV. DISCUSSION**

### **A. Argument of the Parties**

Claimant contends he suffered an injury to his psyche while he was employed as a truck driver in Iraq by Employer/Carrier. According to Claimant, he suffers from PTSD as a result of an IED attack he witnessed on August 12, 2005 during his employment with Employer/Carrier. Claimant maintains that his symptoms satisfy DSM-IV criteria for PTSD and that he is not malingering. Besides arguing that he suffers from PTSD, Claimant also argues that he suffered an aggravation to a pre-existing condition as a result of his experience in Iraq. According to Claimant, his contract rate of hire with Employer/Carrier should be used to determine his average weekly wage, which results in an average weekly wage of \$1,688.33. Claimant contends he is temporarily partially disabled as he has not reached maximum medical improvement ("MMI"). Although Claimant is employed, he argues that he has suffered a loss of wage-earning capacity such that he should be awarded a temporary partial disability compensation rate of \$722.37 based on his residual wage-earning capacity.

Employer/Carrier contends Claimant did not suffer an injury to his psyche as a result of witnessing an IED attack on August 12, 2005. Employer/Carrier argues that Claimant does not suffer from PTSD and to the extent that he maintains that he does, he is malingering. According to Employer/Carrier not only does Claimant not suffer from PTSD, he also does not suffer from any other psychological problems as a result of his employment in Iraq. Employer/Carrier maintain that Claimant's testimony demonstrates that regardless of whether Claimant suffered an injury to his psyche on August 12, 2005, the injury was not disabling as per his testimony he was able to return to his former employment. Upon his return to the United States, Claimant obtained substantially similar employment to the employment he performed in Iraq. Therefore, Employer/Carrier maintain that Claimant has not established that he suffered a work-related injury or illness since Claimant's alleged symptoms have not interfered with his ability to work, except for perhaps two (2) days where he was not permitted to drive because of his use of Cymbalta. Should the undersigned determine Claimant suffers from a work-related



psychological problem, Employer/Carrier contend Claimant's average weekly wage should be calculated under Section 10(c) of the Act and be based on the wages Claimant earned after he returned to the United States, which results in an average weekly wage of \$799.12. Employer/Carrier also contend that medical benefits under Section 7 should be limited to twice monthly psychotherapy visits for one year at \$90.00 a visit, two annual visits for two years to Dr. DeSouza at \$125.00 per visit, and medication for one year at an approximate cost of \$300.00.

## **B. Credibility**

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5<sup>th</sup> Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5<sup>th</sup> Cir. 1998); *Atlantic Marine, Inc., v. Bruce*, 551 F.2d 898, 900 (5<sup>th</sup> Cir. 1981); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence based on the record as a whole. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. at 467; *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5<sup>th</sup> Cir. 1991); *Huff v. Mike Fink Restaurant, Benson's Inc.*, 33 BRBS 179, 183 (1999).

In this case, I was impressed with the sincerity, testimony, and records of Dr. Griffith and Ms. Weatherly. I was equally impressed with the sincerity and testimony of Claimant's wife and stepson. I was not impressed, however, with the sincerity, testimony, and records of Dr. Lawhead, Dr. DeSouza, and Ms. Ragland. Dr. Lawhead is a family practitioner and is one of Claimant's treating physicians. Most recently, he has been treating Claimant for PTSD and ADD. After an examination of Claimant on April 15, 2006, he prescribed Cymbalta for treatment of Claimant's PTSD. Then approximately six (6) days later on April 21, 2006 quite inexplicably, he provided Claimant with a note that indicated Claimant was medically stable, could "go off" Cymbalta, and work full duty. Although Dr. Lawhead indicated in April 2006 that Claimant was medically stable and able to discontinue his use of Cymbalta that he had only been prescribed a few days prior, Dr. Lawhead indicated in a letter dated May 19, 2006 that Claimant was on medication and unable to continue to work. Dr. Lawhead testified that he provided the May 19, 2006 letter upon Claimant's request, and not as a result of an examination of Claimant. He did so even though his last physical examination of Claimant was on April 15, 2006 and, more importantly, even though he could not identify the medication(s) Claimant was taking on May 19, 2006. It is apparent from Dr. Lawhead's records, testimony, and "treatment" that he lacks any personal knowledge of Claimant's present condition. Therefore, I am unable to credit much of the records and testimony of Dr. Lawhead.

Dr. DeSouza is Claimant's treating psychiatrist and Ms. Ragland is his treating psychotherapist. Both Dr. DeSouza and Ms. Ragland have diagnosed Claimant as suffering from PTSD. Both have also acknowledged that in cases where a patient's PTSD is subject of litigation malingering must be ruled out. Although both Dr. DeSouza and Ms. Ragland

acknowledged that malingering must be ruled out in cases where a patient's PTSD condition is the subject of litigation, neither Dr. DeSouza nor Ms. Ragland administered any sort of psychometric testing to determine if Claimant was malingering. Instead, they both indicated they ruled out malingering purely based on Claimant's reported symptoms and their observations of Claimant during interviews with him. In short, their conclusions that Claimant is not malingering was based on nothing more than Claimant's subjective symptoms. Since malingering must be ruled out in cases where a PTSD patient's condition is the subject of litigation, I am unable to credit much of the records and testimony of Dr. DeSouza and Ms. Ragland as neither of them performed any objective testing on Claimant to determine whether he was malingering.

I am also unable to credit much of Claimant's testimony as I find his testimony peppered with contradictions and inconsistencies. On direct examination, Claimant testified he was the first member of his convoy to enter the truck of the driver that was struck by an IED on August 12, 2005. Claimant's testimony contradicts his written account of the events of August 12, 2005 wherein he indicated another driver was the first member of the convoy to enter the truck and discover that the driver of the truck had been killed in the explosion. He also testified that prior to working overseas he had never been prescribed any sort of tranquilizer or anti-anxiety medication. His testimony contradicts the records of Dr. Lawhead which indicate Claimant had previously been prescribed Wellbutrin and Xanax. He additionally testified that he was terminated from his employment with the local trucking company where he obtained employment after he returned to the United States as a result of his use of Cymbalta. His testimony is inconsistent with the testimony of Ms. Weatherly, the vice president of logistics of the trucking company that, the company considered Claimant to have resigned from his employment with them after he provided them with a copy of Dr. Lawhead's May 19, 2006 letter.

On cross examination, Claimant testified he had been "pulled" from driving during his delivery route after he informed the local trucking company that he was taking Cymbalta. His testimony is again inconsistent with the testimony of Ms. Weatherly. Ms. Weatherly testified that Claimant was informed after his delivery route, not during his route that, he could not continue to drive until she found out whether Cymbalta was DOT approved. Claimant also testified that he had informed the trucking company of his use of not only Cymbalta, but also Lexapro. His testimony contradicts the testimony of Ms. Weatherly who stated Claimant never informed her that he was taking Lexapro. Claimant was "surprised" to learn during cross examination that Ms. Weatherly testified he had not told her of his use of Lexapro. He was also "surprised" to learn that neither Dr. Lawhead nor Ms. Ragland noted drowsiness as the reason for his switch from Lexapro to Cymbalta as he had testified.

During cross examination, Claimant testified that Dr. Lawhead provided him with the April 21, 2006 note indicating he had discontinued his use of Cymbalta even though Dr. Lawhead knew he had not. Claimant's testimony contradicts Dr. Lawhead's testimony wherein he indicated he understood Claimant to have quit Cymbalta "cold turkey." His testimony additionally contradicts the records of Dr. DeSouza that indicated he was not taking his medication as prescribed. Claimant also testified that he had considered purchasing a weapon for use in his bail enforcement endeavor, but decided instead to purchase a stun gun. His

testimony is inconsistent with his wife's testimony wherein she indicated she was concerned about Claimant's purchasing of a handgun and shotgun as she feared she might get "shot in the head."

In sum, I was impressed with the sincerity, testimony, and records of Dr. Griffith and Ms. Weatherly. I was also impressed with the sincerity and testimony of Claimant's wife and stepson. I was unimpressed, however, with the sincerity, testimony, and records of Dr. Lawhead, Dr. DeSouza, and Ms. Ragland and, therefore, accord little to no weight to their testimony and records. I was also unimpressed by Claimant's inconsistent and unsupported testimony as I find his testimony peppered with contradictions and inconsistencies. Accordingly, I am unable to credit much of Claimant's testimony.

### **C. Section 20(a) Presumption - Establishing a *Prima Facie* Case**

Under Section 2(2) of the Act, injury is defined as an accidental injury or death arising out of or in the course of employment. 33 U.S.C. § 902(2). Section 20(a) provides that "[i]n any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary: (a) that the claim comes within the provisions of this Act." 33 U.S.C. § 920(a). To establish a *prima facie* claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that: (1) claimant sustained a physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain. **Port Cooper/T. Smith Stevedoring Co., Inc., v. Hunter**, 227 F.3d 285, 287 (5<sup>th</sup> Cir. 2000); **O'Kelly v. Department of the Army**, 34 BRBS 39, 40 (2000); **Kier v. Bethlehem Steel Corp.**, 16 BRBS 128, 129 (1984). Ordinarily, in cases concerning a traumatic injury, a claimant need only show conditions existed at work that could have caused the injury. **Leblanc v. Port Cooper/T. Smith Stevedoring Co., Inc.**, 130 F. 3d 157, 160-161 (5<sup>th</sup> Cir. 1997).

To show harm or injury a claimant must show that something has gone wrong with the human frame. **Crawford v. Director, OWCP**, 932 F.2d 152, 154 (2<sup>nd</sup> Cir. 1991); **Wheatley v. Adler**, 407 F.2d 307, 311-12 (D.C.Cir. 1968); **Southern Stevedoring Corp., v. Henderson**, 175 F.2d. 863, 866 (5<sup>th</sup> Cir. 1949). Under the aggravation rule, an entire disability is compensable if a work related injury aggravates, accelerates, or combines with a prior condition. **Gooden v. Director, OWCP**, 135 F.3d at 1069 (5<sup>th</sup> Cir. 1998); **Kubin v. Pro-Football, Inc.**, 29 BRBS 117, 119 (1995). However, an injury cannot be found absent some work-related accident, exposure, event or episode. **Adkins v. Safeway Stores, Inc.**, 6 BRBS 513, 517 (1978).

Although a claimant is not required to introduce affirmative medical evidence establishing that working conditions caused the harm, a claimant must show the existence of working conditions that could conceivably cause the harm alleged beyond a "mere fancy or wisp of 'what might have been.'" **Wheatley v. Adler**, 407 F.2d at 313. A claimant's uncontradicted credible testimony alone may constitute sufficient proof of physical injury. **Hampton v. Bethlehem Steel Corp.**, 24 BRBS 141, 144 (1990); **Golden v. Eller & Co.**, 8 BRBS 846, 849 (1978), *aff'd*, 620 F.2d 71 (5<sup>th</sup> Cir. 1980). However, uncorroborated testimony by a discredited

witness is insufficient to establish that an injury occurred in the course and scope of employment, or conditions existed at work which could have caused the harm. **Bonin v. Thames Valley Steel Corp.**, 173 F.3d 843 (2<sup>nd</sup> Cir. 1999) (unpub.) (upholding ALJ ruling that the claimant did not produce credible evidence a condition existed at work which could have caused his depression); **Alley v. Julius Garfinckel & Co.**, 3 BRBS 212, 214-15 (1976); **Smith v. Port Cooper/T. Smith Stevedoring Co., Inc.**, 17 BRBS 721, 727 (1985) (ALJ).

Once a *prima facie* case is established, a presumption is created under Section 20(a) that the claimant's injury or death arose out of employment. **Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter**, 227 F.3d at 287. A claimant's failure to show an antecedent event will prohibit the claimant from establishing a *prima facie* case and his entitlement to the Section 20(a) presumption. Moreover, "the mere existence of a physical impairment is plainly insufficient to shift the burden of proof to the employer." **U.S. Industries/Federal Sheet Metal Inc. v. Director, OWCP**, 455 U.S. 608 (1982). See also, **Bludworth Shipyard Inc. v. Lira**, 700 F.2d 1046, 1049 (5<sup>th</sup> Cir. 1983); **Devine v. Atlantic Container Lines**, 25 BRBS 15, 19 (1990).

To rebut the Section 20(a) presumption, an employer must present substantial evidence that a claimant's condition is not caused by a work related accident or that the work related accident did not aggravate claimant's underlying condition. **Conoco, Inc. v. Director, OWCP**, 194 F.3d 684, 687-88 (5<sup>th</sup> Cir. 1999); **Gooden v. Director, OWCP**, 135 F.3d 1066, 1068 (5<sup>th</sup> Cir. 1998); **Port Copper/T. Smith Stevedoring Co. v. Hunter**, 227 F.3d at 287. The Fifth Circuit, the Circuit has held that "when an employer offers sufficient evidence to rebut the [Section 20(a)] presumption the kind of evidence a reasonable mind might accept as adequate to support a conclusion only then is the presumption overcome." **Noble Drilling v. Drake**, 795 F.2d 478, 481 (5<sup>th</sup> Cir. 1986); See also, **Ortco Contractors, Inc. v. Charpentier**, 332 F.3d 283, 290 (5<sup>th</sup> Cir. 2003) (stating that the requirement is less demanding than the preponderance of the evidence standard); **Conoco, Inc. v. Director, OWCP**, 194 F.3d at 690 (stating that the hurdle is far lower than a ruling out standard); **Stevens v. Todd Pacific Shipyards Corp.**, 14 BRBS 626, 628 (1982), *aff'd mem.*, 722 F.2d 747 (9<sup>th</sup> Cir. 1983) (stating that the employer need only introduce medical testimony or other evidence controverting the existence of a causal relationship and need not necessarily prove another agency of causation to rebut the presumption of Section 20(a) of the Act); **Holmes v. Universal Maritime Serv. Corp.**, 29 BRBS 18, 20 (1995) (stating that the unequivocal testimony of a physician that no relationship exists between the injury and claimant's employment is sufficient to rebut the presumption.).

If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation. **Del Vecchio v. Bowers**, 296 U.S. 280, 286-87 (1935); **Port Cooper/T. Smith Stevedoring Co., v. Hunter**, 227 F.3d 285, 288 (5<sup>th</sup> Cir. 2000); **Holmes v. Universal Maritime Serv. Corp.**, 29 BRBS 18, 20 (1995). In such cases, an administrative law judge ("ALJ") must weigh all of the evidence relevant to the issue of causation. If the record evidence is evenly balanced, then employer must prevail. **Director, OWCP v. Greenwich Collieries**, 512 U.S. 267, 281 (1994).

In this case, the record indicates Claimant was employed by Employer to transport materials from Kuwait to military bases throughout Iraq. On August 12, 2005, the convoy in which Claimant was traveling was subject to an IED attack. A truck in the convoy was severely

damaged and the driver killed. As a bobtail driver, Claimant was instructed to retrieve the other driver's body from the damaged truck. Claimant entered the truck to retrieve the driver's body, but found all that was left of the driver was a forearm. With assistance from military personnel, the convoy was able to resume its route back to base where members of the convoy were instructed to take administrative leave and to return to work when they felt fit. Claimant took five (5) days administrative leave after which he returned to work. Claimant worked for approximately three (3) to three and one-half (3½) weeks at which point he returned to the United States on R&R. Claimant had planned to return to his employment with Employer for an additional six (6) months on October 5, 2005. However, prior to October 5, 2005, Claimant was informed that a friend of his had been killed in Iraq. Upon learning of his friend's death, Claimant decided not to return to his employment with Employer.

On February 22, 2006, Claimant was referred by Dr. Minix through Employer's EAP service to Ms. Ragland, a psychotherapist, for treatment of PTSD.<sup>9</sup> Ms. Ragland eventually referred Claimant to a psychiatrist, Dr. DeSouza, for treatment. Both Ms. Ragland and Dr. DeSouza determined Claimant was suffering from PTSD. Neither, however, performed any sort of objective testing to rule out malingering. Instead, each testified they ruled out malingering by noting Claimant's reported symptoms and observing Claimant's demeanor and behavior during interviews with them. As both Ms. Ragland and Dr. DeSouza acknowledged, malingering must be ruled out in cases where a patient's PTSD condition is subject of litigation. Considering Claimant's inconsistent and contradictory testimony, I find that noting his subjective symptoms and his physical demeanor during his reporting of those symptoms clearly insufficient to rule out malingering. Therefore, although conditions existed on August 12, 2005 that could have caused PTSD, I find Claimant failed to meet his *prima facie* case of an injury under Section 20(a) as neither his treating psychotherapist nor his treating psychiatrist sufficiently ruled out malingering to show that Claimant actually suffered from PTSD.

Had I found, however, that Claimant had established a Section 20(a) *prima facie* claim, I nonetheless would deny benefits as I find Employer/Carrier satisfied their Section 20(a) rebuttal burden and based on the record as a whole find Claimant did not establish that he suffered an injury during his employment with Employer. On July 15, 2006, Dr. Griffith performed an independent psychiatric evaluation of Claimant upon Employer/Carrier's request. As part of his evaluation of Claimant, Dr. Griffith conducted an interview with Claimant to obtain his personal history. After his interview with Claimant, Dr. Griffith suspected Claimant was malingering due to exaggerations in his recounting of the events of August 12, 2005 such as when he reported that the deceased driver was a friend of his when he in fact did not know the man. He also suspected Claimant was malingering based on his eagerness to constantly recount the events of August 12, 2005 since most PTSD patients avoid recounting their experience as it was a painful experience.

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<sup>9</sup> Although it is apparent from the record that Dr. Minix referred Claimant to Ms. Ragland for PTSD, there is insufficient information in the record regarding her evaluation of Claimant to determine if her referral to Ms. Ragland is sufficient to satisfy Claimant's Section 20(a) *prima facie* case. All that is in the record is a history of two telephone calls, one with Claimant's wife regarding Claimant's efforts to "get his job back" and one with Claimant regarding his job and a notation by Dr. Minix of a referral to Ms. Ragland.

Dr. Griffith additionally suspected Claimant was malingering due to his description of his alleged flashbacks. He reported that his flashbacks were like flashbacks as they are portrayed in movies. According to Dr. Griffith, flashbacks are not typically experienced as they are portrayed in movies. Rather, they involve more than one sensation, feel as though they occur in the present time, and induce an emotional response appropriate during the time of the trauma. Dr. Griffith further suspected Claimant was malingering based on his description of his alleged nightmares, his exaggerations of his symptoms, his rehearsed manner of reporting his symptoms some of which Dr. Griffith categorized as “classic textbook examples,” and his chronic reports of no change in his condition despite months of treatment.

Besides interviewing Claimant, Dr. Griffith also administered a MMPI-2. The MMPI-2 is a diagnostic tool Dr. Griffith uses to corroborate his clinical impressions and to rule out malingering. The results of Claimant’s MMPI-2 showed Claimant to be “faking bad” and exaggerating his symptoms to an impossible degree. As such, Dr. Griffith concluded based on his interview with Claimant and the results of Claimant’s MMPI-2 that Claimant was malingering. As previously indicated I was impressed with the sincerity, testimony, and records of Dr. Griffith and find no basis to discredit his opinion. Dr. Griffith, like Dr. DeSouza and Ms. Ragland, acknowledged that in cases where a patient’s PTSD condition is subject to litigation, malingering must be ruled out. Unlike Dr. DeSouza and Ms. Ragland, however, Dr. Griffith not only interviewed Claimant to determine whether he suffered from PTSD, he also performed psychometric testing. As such, his report regarding Claimant’s condition was based not merely on subjective findings; but rather, based on both subjective and objective findings both of which caused him to conclude Claimant was malingering. I find Dr. Griffith’s conclusion that Claimant was malingering satisfies Employer/Carrier’s Section 20(a) rebuttal burden as his conclusion was based on both subjective and objective findings as opposed to merely subjective findings, which considering Claimant’s inconsistent and contradictory testimony are not themselves trustworthy. Therefore, I find had Claimant established a Section 20(a) *prima facie* claim, Dr. Griffith’s report satisfies Employer/Carrier’s Section 20(a) rebuttal burden.

Viewing the record as a whole, I find that Claimant did not establish that he suffers from PTSD. Claimant testified that when he returned to the United States for R&R he intended to return to his employment with Employer in October to work for an additional six (6) months. However, after he heard that a friend had been killed in Iraq, he decided not to return to his employment with Employer. He testified that it was grief over his friend’s death and not fear or anxiety that kept him from returning to his employment. He did not report any symptoms of psychosis resulting from his employment until approximately six (6) months after he returned to the United States. Claimant first reported symptoms of psychosis to Dr. Minix through Employer’s EAP service. According to Claimant’s testimony, his wife contacted Employer’s EAP service to try to obtain treatment for him. The EAP records show, however, that Claimant’s wife contacted the service regarding Claimant’s difficulties “getting his job back.” It was not until Claimant contacted the EAP service himself that the record contains a notation of PTSD.

During the six (6) months between Claimant’s return to the United States and his first report of symptoms of psychosis, Claimant testified he “lived on the computer.” Besides working on his own website regarding Iraq, Claimant spent time visiting the website [americancontractorsiniraq.com](http://americancontractorsiniraq.com). He also spent time visiting on-line support groups to discuss his

experience in Iraq. At least one of the internet sites Claimant visited, americancontractorsiniraq.com, contained information regarding PTSD, including symptomology. In addition, the record indicates that in 2000 Claimant was involved in a motorcycle accident that resulted in severe head trauma. He was diagnosed as suffering from PTSD as a result of that accident. Although it is not clear that Claimant received any treatment other than medication for his PTSD, presumably he obtained a familiarity with the symptoms of PTSD from that experience.

The record, in sum, shows that Claimant waited approximately six (6) months to report symptoms of psychosis. During those six (6) months he spent time visiting internet sites where he could have learned of the symptomology of PTSD. Had he not studied the symptomology of PTSD during that time, he presumably had a familiarity with the symptomology as a result of his previous diagnosis of PTSD. Several inconsistencies and contradictions in Claimant's testimony show he was being untruthful. The only psychometric testing performed on Claimant showed he was exaggerating and "faking bad." The record as a whole, therefore, supports Dr. Griffith's conclusion that Claimant was malingering and does not suffer from PTSD. As such, I find that based on the record, Claimant did not establish that he suffers from PTSD.

As for aggravation of a pre-existing condition, although Claimant was previously diagnosed with PTSD neither Claimant's treating physicians nor Employer/Carrier's consulting physician concluded Claimant's previous PTSD was aggravated or accelerated by his employment experience in Iraq. Therefore, I find Claimant did not establish that he suffered an aggravation of his previously diagnosed PTSD. I also find Claimant did not establish that he suffered an aggravation of a pre-existing personality disorder. Dr. Griffith indicated that Claimant suffered from a pre-existing personality disorder, specifically passive dependent meaning Claimant is an underachiever that readily accepts failure. He acknowledged that Claimant's personality disorder could have been aggravated by his experience in Iraq as he would most likely view his decision to not return to his employment with Employer as another failure. He indicated, however, that an aggravation of Claimant's personality disorder could not be gauged within any reasonable medical probability. While Dr. Griffith determined Claimant suffered from a personality disorder aggravation of which could not be gauged, Dr. DeSouza concluded Claimant did not suffer from any personality disorder. Since Dr. Griffith was unable to conclude whether Claimant's personality disorder was aggravated by his employment experience with Employer and since Dr. DeSouza concluded Claimant does not suffer from a personality disorder, I find Claimant failed to establish that he suffered an aggravation of a pre-existing personality disorder.

#### **IV. CONCLUSION**

Since Claimant failed to establish that he suffered a compensable injury, findings as to causation, nature and extent, maximum medical improvement, average weekly wage, Section 7, attorney's fees, penalties, and interest is unnecessary.

## **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I find no merit to the instant claim. Accordingly it is hereby dismissed.

**A**

CLEMENT J. KENNINGTON  
ADMINISTRATIVE LAW JUDGE